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No. _____

Supreme Court of the United States

October Term, 1980

HUGH S. HUNT,
Petitioner,

vs.

RAY LEE HUNT, EXECUTOR OF THE
ESTATE OF H. L. HUNT,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Fifth Circuit

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QUESTIONS PRESENTED

Whether the Court of Appeals for the Fifth Circuit, by applying a conflict of laws rules based upon a broad interest analysis to a Louisiana contract in defiance of Louisiana statutory law and judicial interpretation, has violated this Court's mandates in the *Challoner, Erie,* and *Klaxon* cases.

Whether a federal court can enforce a contract entered into in court in settlement of litigation, which contract by its terms violates the public policy of the forum state and would be unenforceable in the State Courts.

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OPINIONS BELOW

The opinions of Hon. Tom Stagg, Judge of the United States District Court for the Western District of Louisiana dated December 17, 1978, and of the United States Court of Appeals for the Fifth Circuit dated December 1, 1980, are included in the Appendix.

JURISDICTION

Federal jurisdiction in the instant case is founded in the diversity jurisdiction of 28 U.S. 1332 in that the parties are citizens of different states and the matter in controversy exceeds $10,000. The Court is enabled to grant a writ of Certiorari of the United States Court of Appeals for the Fifth Circuit rendered on December 1, 1980, upon which rehearing was denied January 13, 1981. Mr. Justice Powell, on behalf of your honorable Court, enlarged the time within which to file the instant petition to April 30, 1981, by order dated April 9, 1981.

PARTIES

Hugh S. Hunt, Defendant
Ray Lee Hunt, Executor of the Estate of H.L. Hunt, Defendant
Frania Tye Lee, Plaintiff
Ronald Cartledge, Defendant

A list of non-party signatories to the Master Settlement Agreement appears in that document in the Appendix.

STATUTES AND CONSTITUTIONAL PROVISION

U.S. Constitution Amendment 10. The powers not delegated to the United States by this Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

La. Civil Code Art. 10. The form and effect of public and private instruments are governed by the laws and usages of the places where they are passed or executed. But the effects of acts passed in our country to have effect in another country, is regulated by the laws of the country where such acts are to have effect (third sentence omitted).

La. Civil Code Art. 11. Individuals cannot by their conventions, derogate from the force of laws made for the preservation of public order or good morals.

But in all cases in which it is not expressly or impliedly prohibited, they can renounce what the law has established in their favor, when this renunciation does not wound the right of others, and is not contrary to the public well being.

La. Civil Code Art. 12. When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.

La. Civil Code Art. 984. The acceptance or rejection made by the heir, before the succession is opened or left, is absolutely null and can produce no effect; but this does not prevent the heir who has thus accepted, from accepting or rejecting validity the succession when his right is complete.

La. Civil Code Art. 1887. Future things may be the object of obligation. One cannot, however, renounce the succession of an estate not yet devolved, nor can any stipulation be made with regard to such a succession, even with the consent of him whose succession is in question.

La. Civil Code Art. 2454. The succession of a living person cannot be sold.

STATEMENT OF THE CASE

Frania Tye Lee brought suit as a Louisiana resident in the United States District Court for the Middle District of Louisiana on November 11, 1975 to (1) be declared putative wife of H.L. Hunt, whom she had married in Hillsborough County, Florida, in 1925 unaware of his pre-existing marriage, and (2) secure her one-half community interest in the considerable property owned by his estate in Louisiana and acquired by him during the existence of their marital relationship. After lengthy litigation on jurisdiction and venue questions not now in dispute, the case was transferred to the Western District of Louisiana, and trial commenced before Judge Stagg and a jury on January 8, 1978. On January 16, Judge Stagg requested Mrs. Lee, then 75 years of age, and her son, Hugh S. Hunt, to meet with him privately in chambers in the absence of counsel and advised them to accept a proffered settlement which they had already rejected. Thereafter they met with their counsel, advised them of the judge's conversation and reluctantly accepted the offer. Thereupon, counsel for the various parties and several non-parties advised the court of the acceptance of a settlement, and a proposed settlement was dictated in the presence of counsel, the parties, and several Hunt relatives, although Hugh, who was not represented by counsel, left the chambers early because new conditions were incorrectly introduced as having been previously discussed. Essentially, this agreement provided for payment of $7,500,000 to Mrs. Lee and/or her children and grandchildren, complete confidentiality on both sides, a limited waiver of future inheritance

rights between the two sides, transfer of control of Reliance Trusts, discontinuance of certain litigation, and the sealing of the court record. Eleven persons, including Hugh, signed the proposed settlement, although Hugh emphasized that in doing so, he could not bind his family, whose signatures he was advised would be required in a formal settlement agreement to be finalized for the settlement to be operative. Judge Stagg then discharged the jury, and on January 23, 1978, entered a judgment of dismissal with prejudice based upon the January 16 "settlement."

Thereafter, counsel for the Estate of H. L. Hunt prepared a "Master Settlement Agreement," which both expanded upon and varied significantly from the preliminary agreement of January 16. Mrs. Lee refused to sign the Master Settlement Agreement as offered and replaced her attorneys when they said no further changes could be made. After a few of the changes she wanted were made and under the pressure of suit by her former attorneys, and following a letter to her from the Court urging promptness, she signed the agreement along with all the persons (most of whom were strangers to the litigation) called upon to sign the agreement, with the exception of Hugh. (Ronald Cartledge, a party signer, has sought to withdraw his signature on the grounds of duress, inter alia, and having been denied by Judge Stagg, has appealed and is scheduled to be heard on oral argument before the Court of Appeals for the Fifth Circuit on May 19, 1981.)

The Master Settlement Agreement differed significantly from the preliminary agreement in a number of respects. First, whereas the preliminary agreement provided, "if possible", for the transfer of control of Reliance Trusts, a multimillion dollar trust established by Frania Lee for her children which had come under the exclusive control of employees of the defendants who were manipulating it to the defendants' advantage, the Master Settlement Agreement was silent on the point. Second, while the preliminary agreement was silent as to the choice of law, so that under Art. 10 of the Louisiana Civil Code, Louisiana law would presumptively control, Louisiana

being both the place of signature and the location of the significant acts to be performed, the Master Settlement Agreement introduced the law of Texas as prevailing. Third, whereas the preliminary agreement provided that the parties relinquish inheritance rights by operation of intestate law, the Master Settlement Agreement expanded this to cover pre-existing wills. Fourth, the Master Settlement Agreement created a one-sided liquidated damages clause for breach of confidentiality that had never been discussed. Fifth, the Master Settlement Agreement introduced a bar to litigation arising out of both future and separate past events, a provision never contemplated in the original agreement. Sixth, no provision was made for the signing of children and spouses concerning inheritance rights.

Counsel for the Hunt Estate then filed a petition to enforce the Master Settlement Agreement on September 26, 1978. On the same date the district court joined Hugh as a party defendant to the action pursuant to Fed. R. Civ. P. 19(a) and ordered him to show cause why the settlement should not be enforced.

In response to the petition and these orders, Hugh filed two motions: (1) to vacate or modify judgment. Fed. R. Civ. P. 60 (b); and, (2) to dismiss the petition pursuant to Fed. R. Civ. P. 12(b)(1), (2), (5) and (6). On December 7, 1978, Judge Stagg held a hearing specifically limited to the issues of which conditions of the proposed settlement of January 16 differed from the Master Settlement Agreement and excluded testimony on any other issues. The 60(b) motion was specifically excluded from the scope of the hearing but was not withdrawn or abandoned. Testimony by Mrs. Lee as to her understanding jointly with Hugh as to terms and meaning of the preliminary agreement was excluded by the Court as "irrelevant," as was the testimony of Ronald Cartledge, who had been with his grandmother and uncle during the trial.

On December 19, 1979, the District Court entered a memorandum ruling, Lee v. Hunt, 483 F. Supp. 826 (W.D. La.

1975) in which it rejected all of Hugh's Rule 12(b) claims and held that the January 16 settlement was binding on him and that all provisions of the Master Settlement Agreement were within the contemplation of the earlier agreement and that, for reasons not altogether clear, it was impossible for the Hunt Estate to have arranged the resignation of its employees and their replacement as Advisory Board members and trustee of the Reliance Trusts. The Court also, acknowledging that the agreement, which contemplated waiver of inheritance rights in the estates of living persons, was contrary to Louisiana law, applied the law of Texas on the presumption that the parties must have intended the original agreement to be valid regardless of the very strong statutory policy of the forum and of the fact that the original agreement was completely silent as to choice of law. (The Master Settlement Agreement had, for the first time, introduced the law of Texas as the law of the contract months after the preliminary agreement.) The court was silent as to how the interpretation could be reconciled with the *Erie-Klaxon* doctrine. Accordingly, the court entered final judgment on December 27, 1978, ordering Hugh to execute the Master Settlement Agreement or a court employee to do so in his stead and to discontinue other existing litigation in Louisiana.

Hugh then appealed to the Fifth Circuit, basing his position primarily upon the inconsistencies between the Master Settlement Agreement and the preliminary agreement, and upon the fact that the renunciation of the rights of inheritance was Contra Bonos Mores under Louisiana law, to which the law of the forum gave presumptive effect.

The Court of Appeals sustained the trial court on December 1, 1980, but disagreed with its reasoning by determining that, under the interests analysis of the Restatement of Conflict of Laws, the law of Texas should be applied to the preliminary agreement and that La. Civ. Code, Art. 10 could be disregarded and dismissed the Louisiana law against waiver of future inheritance rights with a footnote. The Court of Appeals then went on to affirm the findings of the District Court on

the facts, concluding that there was a meeting of the minds, despite unrefuted testimony to the contrary, in the preliminary agreement and that the Master Settlement Agreement faithfully carried out the preliminary agreement.

Hugh filed a Petition for Rehearing December 29, 1980, pointing out the inconsistency of the Court of Appeals conclusion as to Conflict of Laws both with Louisiana law and the facts of the case and, once again, the inconsistencies between the proposed settlement and the Master Settlement Agreements. Hugh also asked that the case be remanded since there was no evidence on the critical questions of a certain party's capacity to sign, and/or the transfer of control of Reliance Trusts. The Court of Appeals denied rehearing without an opinion on January 13, 1981.

Hugh S. Hunt has therefore filed the instant Petition for Certiorari.

WHY THE WRIT SHOULD BE GRANTED

I. THE COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS, BY IMPOSING ON LOUISIANA THE "INTERESTS ANALYSIS" OF THE RESTATEMENT OF CONFLICT OF LAW SO AS TO DEFEAT THE USE OF LOUISIANA SUBSTANTIVE LAW, BOTH RENDERED NUGATORY THE COURT'S MANDATE IN *DAY AND ZIMMERMAN V. CHALLONER* AND EXPLICITLY DISREGARDED THE SUBSTANTIVE LAW, BOTH STATUTORY AND JUDICIAL, OF THE FORUM STATE, LOUISIANA.

This petition results from a renewed effort by the Fifth Circuit to impose a broad interests analysis approach to Conflicts of Laws in opposition to the clearly established policies of the legislature and courts of Louisiana. Your Honorable Court has rejected the Fifth Circuit's approach previously by

reversing the Fifth Circuit in *Day and Zimmerman v. Challoner.*[1] Notwithstanding, the Fifth Circuit now defends its position in that case by holding that Louisiana has adopted its earlier opinion in *Cahlloner.* But, as will be shown, Louisiana has done nothing of the sort.

This case arises as a result of a settlement agreement arrived at in a federal judge's chambers in settlement of a diversity case in Louisiana. The preliminary agreement contained provisions specifically prohibited as against public morality by the Louisiana legislature and consequently void in applicable Louisiana cases.[2] One of the signers having refused to sign a much more elaborate final agreement, an order to enforce the settlement was issued by the District Court, which admitted that the contract at least partly was unenforceable under the laws of the forum. The courts below both sought to salvage the settlement through application of the law of Texas despite the utter silence of the contract on the subject, despite the unrefuted testimony that the parties on one side definitely intended that the laws of Louisiana be applied to the settlement, and despite the explicit law of Louisiana mandating the application of its own law unless, as was not the case here, the contract was to be completely performed elsewhere.

This case has in this respect a perhaps unique feature. A federal district court, in a diversity case, has sponsored (see Appendix E) a settlement agreement which its forum state "looks upon with disfavor" and has then sought to escape the policy of that forum by applying foreign law. If the entire thrust of the line of cases commencing with *Erie* is to create identical outcomes in federal and state courts in a forum state, a more inappropriate activity by a federal court would be hard to imagine.

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1. 423 U.S. 3, 96 S. Ch. 167, 46 L.Ed. 2d 3, overruling *Challoner v. Day and Zimmerman, Inc.* 512 F.2d 77 (5th Cir. 1975).

2. *Schiffman v. Service Truck Lines, Inc.*, La. App. 1974, 308 So. 2d 824, 92 A.L.R. 3rd 1264.

Under *Erie*[3] – *Klaxon*[4], and *Challoner* and in accordance with the 10th Amendment to the United States Constitution, the appropriate analysis of what laws must be applied must begin with the conflicts law of the forum, which in this case is Louisiana.

Louisiana has a statute in point. Article 10 of the Civil Code provides as a general rule that "the form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed." In other words, unless there is an exception (which in this case there is not) Louisiana law rules as the law of the place of the contract.

In the instant case, that should settle matters, since it is quite clear that the settlement sought to be enforced against Hugh S. Hunt is illegal under Louisiana law. The settlement agreement provides for a mutual renunciation of rights in the estates of the several parties. Such a provision is forbidden by no fewer than three articles of the Louisiana Civil Code, Arts. 984, 1887 and 2454, of which 1887 may be quoted as clear, "One can not, however, renounce the succession of an estate not yet devolved, nor can any stipulation be made with regard to such a succession, even with the consent of him whose succession is in question." Article 2454 is brief and to the same effect: "The succession of a living person can not be sold."

Since Article 11 of the same code provides that "individuals can not by their conventions derogate from the force of laws made for the preservation of public order or good morals" and Article 12 provides that such action is void, and since the Louisiana Court of Appeals in *Schiffman v. Service Truck Lines*, (La. App. 1974, 308 So. 2nd 824, 827) has specifically held such renunciations to be "contrary to morals in the sense

3. *Erie R.R. Co. v. Tompkins*, 1938, 304 U.S. 64, 58 S.Ct. 817, 82 L.EJ, 1188.

4. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 1941, 313 U.S. 487, 62 S.Ch. 1020, 85 L.Ed. 1477.

of C.C. 1985 and therefore ineffective", one would assume, that the contract is clearly invalid under the law of the forum.

However, the local federal courts, frustrated by *Challoner*, but still apparently unreconciled to it, have ignored the forum's law. The district court starts by acknowledging that Louisiana law "looks with disfavor" upon attempts to waive future inheritance rights. However, stating (incorrectly) that none of the parties is a Louisiana resident, it proceeds to ignore the Louisiana rule by (a) concluding that the releases take effect in Texas, so that Texas law should govern and (b) that the parties must have intended Texas law to govern, since to apply the law of the forum "would defeat the aim of the parties, most of whom reside in Louisiana."[5]

As the Articles of the Civil Code cited above clearly indicate, the aim of the parties has nothing to do with the subject, since Louisiana forbids and voids the consummation of such aim.

Furthermore, Louisiana case law dictates that Louisiana will not give weight to a stipulation to adopt a foreign law as the law of the contract if the effect is to violate Louisiana public policy. In *Associated Press v. Toledo Investments, Inc.*, (La. App.) 389 So. 2d 752 (1978), the Louisiana Court of Appeals voided a stipulation of New York law that violated Louisiana policy dealing with money damages. In *Fine v. Property Damage Appraisers*, 393 F.Supp. 1304 (1978), the District Court similarly refused to enforce a stipulation of Texas law to give life to a covenant not to compete, saying " . . . We conclude that Louisiana has expressed strong public policy reasons against enforcement of agreements not to compete. . . . Since the application of Texas law would result in at least partial enforcement of that agreement . . . Texas law cannot govern the impact of the contract. We thus apply the substantive law of Louisiana, which would be the applicable law in the absence of an effective choice of laws by the parties."[6]

5. App., p. D15.
6. *Op. Cit.*, p. 1308.

It would follow, therefore, that unless a basis can be found in Louisiana law for an exemption from the oft-stated public policy quoted above, Judge Stagg's view is clearly wrong, and Louisiana policy and law have been violated by the attempt to enforce the settlement.

Now we come to the second half of the lower courts' effort to construct a contract at the expense of Hugh S. Hunt and the Louisiana legislature. Two presumptions are brought into play to salvage the contract. The first is to say that the second sentence of Article 10 of the Civil Code can be made to apply. This provides that "the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect." The District Court, but not the Court of Appeals, concluded that since the persons as to whom waiver was taking place were in Texas, Texas law would apply as to the contract. The District Court completely ignored the fact that many of the persons involved in the waivers were not Texas residents. In addition, in view of the number of Louisiana events which will be detailed below that are part of the contract, this application of foreign law is also clearly wrong under Louisiana law.

The Court of Appeals, however, saw the error of the lower court and in effect overruled it by taking another tack, one so clearly fraught with legal mischief as to require the attention of this Court. That was to identify the interests analysis of the Restatement of Conflicts of Law with the law of Louisiana and thereby evade the Louisiana statutes altogether and bring the contract under the law of Texas.[7] This the Louisiana legislature and Courts have steadfastly resisted, and this kind of creativity flies directly in the face of the *Erie-Klaxon-Challoner* line of cases and indeed would void *Challoner* itself.

Some history will help explain the peculiar posture of Louisiana choice of law rules and the federal courts. Louisiana

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7. At p. 1563.

is, of course, a unique state, and many of its Code sections are different from twentieth century legal concepts. The Fifth Circuit attempted in *Challoner v. Day and Zimmerman, Inc.*, 512 F.2d 77 (5th Cir. 1975) to create an exception to the *Klaxon* doctrine in a case where "one of two states related to a case has a legitimate interest in the application of its law and the other has none." 443 F.2d at 890. This Court quite properly rejected that exception in *Day and Zimmerman, Inc. v. Challoner*, 423 US 3, S.Ct. 167, 46 L.Ed. 2d 3 (1975) which pointed out "A federal court in a diversity case is not free to engraft onto those state rules exception or modifications which may commend themselves to the federal court, but have not commended themselves to the State in which the federal court sits." 423 US at 4, 96 S.Ct. at 168.

However, the Fifth Circuit has returned to the attack. In the instant case, it cites *Jagers v. Royal Indemnity Co.*, 276 So. 2d 309 (La. Sup. Ct. 1973) as authority for the proposition that "Louisiana can be read" to adopt the analysis of the Restatement as the law of Louisiana and even to have adopted the Fifth Circuit view in *Challoner*. It therefore has applied that analysis to the instant case. In doing so, it has defied both logic and the law of Louisiana, and if *Challoner* is to be vindicated, this Court must intervene.

The Fifth Circuit, in the instant case, quotes dictum from *Jagers* as follows:

"That some modern methods for determining whether to apply the law of the forum are faulty in some respects should not deter a court in the application of the law of the forum to its citizens, when not otherwise prohibited." A footnote refers the reader to the Restatement of Conflict of Laws for choice of law principles, presumably the faulty ones it was discussing.[8]

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8. "For choice of law principles, see Restatement, Second, Conflict of Laws, Para. 6 (1969).

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

In *Brinkley & West, Inc. v. Foremost Insurance Company*, 499 F.2d 928 (1974) the Fifth Circuit used *Jagers* as the basis for concluding that Louisiana, by that mere footnote, had adopted as the law of Louisiana those very principles that the Louisiana Supreme Court had described as "faulty in some respects." But then, after *Jagers* and *Brinkley*, this Court spoke, reversing the Fifth Circuit in *Challoner* (not before, as the Court of Appeals opinion in the instant case states, thus making the Fifth Circuit's reasoning completely inappropriate.)

So, nothing daunted, the Fifth Circuit has once again attempted to teach law to Louisiana, reaffirming its holding in *Brinkley* without examining the import of this Court's *Challoner* decision a year after *Brinkley*. (Indeed, by describing *Jagers*, written two years before this Court's reversal of *Challoner* as subsequent to *Challoner*, it tried to avoid the issue by altering the calendar!)

The Supreme Court of Louisiana has not passed on the issue of choice of laws under Article 10 since its opinion in *Jagers*. Two intermediate-level Louisiana courts have since then used the *Jagers* analysis in order to apply Louisiana law in cases where Article 10 would have appeared to dictate otherwise.

In *Sutton v. Langley*, La. App. 330 So.2d 321, 327 (1976) writ denied, 32 So.2d 805, 820 and 333 So.2d 32 (1976) involving a Texas insurance contract that analysis citing the Restatement was applied to bring the foreign contract under Louisiana law on the grounds that:

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(2) When there is no such directive, the factors relevant to the choice of applicable rule of law includes:
(a) the needs of the interstate and international system
(b) the relevant policies of the forum
(c) the relevant policies of other interested states and the relative interests of those states in the determination of this particular issue
(d) the protection of justified expectations
(e) the basic policies underlying the particular field of law
(f) certainty, predictability and uniformity of results and
(g) ease in the determination and application of the law to be applied

"The Supreme Court in *Jagers*, concluded that when the foreign state has no interest in Louisiana litigation, the application of Louisiana law by Louisiana courts will contribute much greater predictability, certainty, and consistency to the law. We believe the same to be true where the interests of Louisiana outweigh the interest of the foreign states as in the case here and we hold Louisiana court law to be applicable."

In *Wickham v. Prudential Insurance Company of America*, La. App. 366 So.2d 951 (1978) (incorrectly cited as *Brannon v. Babin*, 366 So.2d 955 in the Fifth Circuit's opinion in the instant case), the Court of Appeals applied Louisiana law to a Mississippi insurance contract on an interests theory citing *Jagers* and obviously giving heavy weight to a strong Louisiana policy of strict construction of insurance contracts. Neither *Sutton* nor *Wickham* cited *Brinkley*, which therefore can fairly be stated to have spent its seven-year career totally without support from the Louisiana courts.

If one returns to what the Louisiana Supreme Court said in the *Jagers* opinion, the Louisiana law in the light of these two cases becomes extremely clear. The *Jagers* opinion expanded Louisiana law in only one direction – it enabled Louisiana to apply its own law to foreign events or contracts when its citizens or public policies are involved. That is exactly what the Louisiana Supreme Court said it was doing in *Jagers*[9], and that is exactly what the Louisiana Court of Appeals did in both *Sutton*[10] and *Wickham*.

The Fifth Circuit has done just the opposite in the instant case! Here, the Court of Appeals has applied the Restatement analysis, not to extend the application of Louisiana forum, as permitted by *Jagers*, but to defeat it. The Fifth Circuit has stated flatly that "the interest analysis of the second paragraph

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9. " . . . should not deter a court in the application of the law of the forum to its citizens. . . ." 276 So.2d at 312.

10. Sutton at 327, "The Supreme Court in Jagers concluded that when the foreign state has no interest in Louisiana litigation, the application of Louisiana law by Louisiana courts will contribute much greater

of the Restatement is to be applied in all cases, regardless of the literal reach of Article 10" and regardless of the Louisiana Supreme Court's description of that analysis as "faulty."[11]

II. THE CONTRACT IS NOT ONE TO BE PERFORMED SOLELY IN TEXAS BUT IN LOUISIANA, TEXAS AND OTHER STATES AND IS THEREFORE A LOUISIANA CONTRACT UNDER LOUISIANA CONFLICTS LAW.

It only remains to be pointed out that the contract is one requiring numerous Louisiana actions and affecting Louisiana legal questions and which therefore, under Louisiana law, remains a Louisiana contract.[11] Not only was Mrs. Lee, a Louisiana resident, called upon to give up various inheritance rights in various living persons (precisely what the Louisiana legislature forbade her to do), a settlement was made in Louisiana governing the devolution of a Louisiana ancillary estate, involving community property accumulated during jointure in Louisiana; Hugh was called upon to dismiss a suit against a Louisiana Collector of Revenue based upon his status under Louisiana statutes, court records were to be sealed in Louisiana, and Mrs. Lee presumably required to observe a confidentiality agreement in Louisiana. Only by nose-counting the various Hunts (none of whom except Ray, the executor, is a party to this case) could a preponderance of Texas interests be erected, and there is absolutely no case in Louisiana surrendering the right of Louisiana to interpret its own contracts simply because one party has more and richer non-party relatives elsewhere. This is a Louisiana contract, invalid be-

predictability, certainty and consistency to the law. We believe the same to be true where the interests of Louisiana outweigh the interests of the foreign state as in the case here. . . ."

11. N.B. The *second* paragraph starts with the words "when there is no such directive. . ." and is an exception to the rule: "A court . . . will follow a statutory directive of its own state. . . ." The Court of Appeals is therefore announcing that it will *not* follow Article 10 of the Civil Code. That is an intolerable violation of the Klaxon doctrine and is identical with that court's position in both Lester and Challoner.

12. Sutton, *supra*.

cause it violates Louisiana law, and the effort to turn it into a Texas contract is pure after-the-fact salvage to which a federal court, bound by *Erie-Klaxon*, can not be a party, any more than it should have been a forum for the confection of such a contract in the first place.

III. SUMMARY

The intervention of this Court is essential to redress the errors in the Fifth Circuit opinion for all of the following reasons:

(1) The states in the Fifth Circuit must be allowed to carry out their own statutory and judicial policies of conflict of laws without correction and alteration from federal courts based on the Fifth Circuit's oft expressed affection for the Restatement. To quote the Fifth Circuit itself, it must not "disregard the fact that many jurisdictions have chosen to retain the traditional rules when litigants argue that such rules be discarded and ask the federal courts to second guess the highest court of a state as to matters of state law."[13] In four cases, *Lester*[14], *Brinkley*[15], *Challoner*[16], and the instant case the Fifth Circuit by devices ranging from outright rejection to skillful rewriting has sought to reform the conflict laws of Texas and Louisiana. This Court has sought to halt this campaign in *Challoner*, and in order to vindicate its own position in *Challoner* must do so again;

(2) The district court has permitted a judicially dictated settlement to violate the declared public policy of the forum state on a matter held by that state's courts and legislature to be one of public morals and policy and to be incapable of being made the subject of a valid contract in

13. *Doss v. Apache Powder*, 430 F.2d 1317, 1325.

14. *Lester v. Aetna Life Ins. Co.*, 433 F.2d 884 (5th Cir. 1970).

15. 499 F.2d 928 (1974).

16. 512 F.2d 77 (5th Cir. 1975), overruled 423 US 3, 96 S.Ct. 167, 46 L.Ed. 213.

that state, and then has upheld that breach in the state's legal system by applying foreign contract law in a forum state whose courts have never permitted foreign law to be so employed and whose legislature has expressly forbidden it;

(3) As a result of the above, the federal and state courts sitting in Louisiana will apply different rules for resolving conflicts of laws. The federal courts will allow foreign law to rule contracts made in Louisiana and to be carried out in Louisiana; Louisiana courts will not. The federal courts will enforce contracts made in Louisiana which are void by Louisiana law, based on an implied choice of foreign laws. Louisiana courts will void the same contract even if the choice of foreign law is explicit. In short, a separate federal interpretation of state statutes now broods in the sky, rather than a federal common law, but the impact on the federal-state relationship is the same. Federal courts have erected "Federal Louisiana law" based on *Brinkley* to compete with "Louisiana Louisiana law" based on the Civil Code. This competition of systems is intolerable, and the Court's intervention is needed to right the balance to the *Erie* norm. Otherwise, forum shopping will result based on predictably different outcomes in federal and state courts, and the state legal structure will be subverted.

Respectfully submitted,

HUGH S. HUNT
12219 River Road
Potomac, Maryland
Pro Se

April 30, 1981

APPENDIX

SUPREME COURT OF THE UNITED STATES

No. A-849

HUGH S. HUNT,
Petitioner,

v.

FRANIA TYE LEE, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 30, 1981.

/s/ Lewis F. Powell, Jr.

Associate Justice of the Supreme Court of the United States

Dated this 9th

day of April, 1981.

APPENDIX

Mrs. Frania Tye LEE, *Plaintiff*,

v.

Ray Lee HUNT, Executor of the Estate of H. L. Hunt, *Defendant-Appellee*,

Hugh S. Hunt, *Defendant-Appellant*.

No. 80-3211
Summary Calendar.

United States Court of Appeals,
Fifth Circuit,
Unit A

Dec. 1, 1980.

Suit was brought against estate executor by decedent's alleged putative wife who claimed that she remain his putative wife until the date of his death. The United States District Court for the Western District of Louisiana, Tom Stagg, J., 483 F.Supp. 826, granted petition to enforce a settlement agreement, and appeal was taken. The Court of Appeals, Randall, Circuit Judge, held that: (1) evidence sustained finding that defendant intended to bind himself by his signature to the settlement agreement and that he understood the agreement and that he understood the agreement to be a complete statement of the terms of the settlement; (2) fact that defendant may have been under great pressure at the time he signed settlement agreement and that emotional strain caused him to leave the meeting at which the settlement agreement was signed before the meeting was completed did not establish duress or undue influence under Texas law; and (3) evidence sustained finding that the intent of settlement agreement signed by defendant was fairly embodied in the subsequent

master settlement agreement, and thus defendant could properly be required to execute it.

Affirmed.

1. Federal Courts ⇐ 412

Although federal courts possess the inherent power to enforce agreements entered into in settlement of litigation, the construction and enforcement of settlement agreements is governed by principles of state law applicable to contracts generally.

2. Federal Courts ⇐ 412

In cases involving the construction and enforcement of settlement agreements, federal courts must apply the choice of law rules of the forum state.

3. Action ⇐ 17

In determining choice of law issues, Louisiana courts apply interest analysis principles contained in the Restatement (Second) of Conflict of Laws.

4. Compromise and Settlement ⇐ 7, 11

Under interest analysis choice of law principles, Texas law governed the interpretation and validity of settlement agreement, since virtually all parties to the agreement were residents of Texas and the bulk of property at issue was located in Texas.

5. Compromise and Settlement ⇐ 21

Insofar as material facts are disputed in the course of proceeding to enforce settlement agreement, district court should hold hearing to obtain evidence on factual matters in dispute.

6. Compromise and Settlement ⇐ 23(3)

Evidence in proceeding on petition to enforce settlement agreement sustained finding that defendant intended to bind himself by his signature to the agreement and that he understood the agreement to be a complete statement of the terms of the settlement.

7. Contracts ⇐ 93(1)

Mistake generally does not excuse contractual obligations unless it is mutual or is induced by the other party.

8. Compromise and Settlement ⇐ 8(4)

Fact that defendant may have mistakenly believed that the applicable law exempted him from the binding force of his signature on settlement agreement did not excuse him from the agreement.

9. Contracts ⇐ 96

In order to prove undue influence, one must demonstrate that persuasion, entreaty, importunity, argument, intercession, and solicitation were so strong as to subvert and overthrow the will of the person to whom they are directed.

10. Compromise and Settlement ⇐ 8(3)

Fact that defendant may have been under great pressure at the time he signed settlement agreement and that emotional strain caused him to leave the meeting at which the settlement agreement was signed before the meeting was completed did not establish duress or undue influence under Texas law.

11. Contracts ⇐ 51, 52

Party need not receive the benefit of a contract in order to be bound by it; it is enough that party seeking to hold another to the contract suffer a legal detriment.

12. Contracts ⇐ 50

So long as consideration is sufficient to support the contract, which party actually receives the consideration is irrelevant.

13. Compromise and Settlement ⇐ 6(1)

Fact that settlement agreement guaranteed defendant none of the final settlement amount, which was to be distributed in accordance with defendant's mother's directions, did not render the agreement unenforceable as to defendant.

14. Contracts ⇐ 176(2)

Under Texas law, interpretation of an unambiguous contract, as well as determination of whether or not a contract is ambiguous, is a legal question, but once it is determined that contract is ambiguous, determination of actual intent of parties becomes a factual question.

15. Compromise and Settlement ⇐ 23(3)

Evidence in proceeding on petition to enforce settlement agreement signed by defendant was fairly embodied in the subsequent master settlement agreement, and thus defendant could properly be required to execute it.

16. Compromise and Settlement ⇐ 7

Allegation that certain provisions of master settlement agreement were contra bones mores under Louisiana law was irrelevant to the issue of the effectiveness of the agreement, since the law of Texas governed the validity of the agreement.

Appeal from the United States District Court for the Western District of Louisiana.

Before GEE, RUBIN and RANDALL, Circuit Judges.

RANDALL, Circuit Judge:

This appeal arises from a suit originally filed in 1975 by Mrs. Frania Tye Lee, who is the mother of the Appellant herein, Hugh S. Hunt (a/k/a Hugh Lee Hunt, hereinafter "Hugh Hunt"), against the executor of the Estate of H. L. Hunt, alleging a putative marriage with the late H. L. Hunt and, as such, an entitlement to a community interest in property acquired during the alleged relationship. After lengthy litigation on jurisdiction, venue and related matters, *Lee v. Hunt*, 410 F.Supp. 329 (M.D.La. 1976); *Lee v. Hunt*, 415 F.Supp. 245 (M.D.La. 1976); *Lee v Hunt*, 431 F.Supp. 371 (W.D.La. 1977) the matter was finally tried before a jury between January 9 and January 16, 1978. On January 16, counsel for the respective parties requested a conference in chambers with the trial judge, at which time they advised the court that they had reached an agreement of settlement of the pending lawsuit. The judge requested that the parties dictate the terms of the agreement to the court reporter in his chambers. During a brief recess the dictated settlement was transcribed, and eleven persons – including Hugh Hunt – thereafter signed it. The district court discharged the jury and, on January 23, 1978, entered a judgment of dismissal with prejudice based upon the January 16 settlement. Pursuant to this agreement, counsel for the Hunt Estate then prepared a "master settlement agreement" which spelled out in greater detail the agreement among the parties. All of the necessary parties (nineteen in all) signed this document, with the exception of Hugh Hunt.

Having failed to persuade Hugh Hunt, counsel for the Hunt Estate filed a petition to enforce the settlement agreement on September 26, 1978. On the same date the district court joined Hugh Hunt as a party defendant to the action, pursuant to Fed.R.Civ.P. 19(a), and ordered him to show cause why the settlement should not be enforced. In response to the petition and these orders, Hugh Hunt filed two motions: (1) to vacate or modify judgment, Fed.R.Civ.P. 60(b); and (2) to dismiss the petition pursuant to Fed.R.Civ.P. 12(b)(1), (2), (5), and (6), that is for lack of subject matter and personal

jurisdiction, for insufficiency of service of process, and for failure to state a claim upon which relief can be granted. On December 7, 1978, the district court held a plenary hearing on the petition. At that time counsel for Hugh Hunt withdrew the Rule 60(b) motion. On December 19, 1979, the district court entered a memorandum ruling, *Lee v. Hunt*, 483 F.Supp. 826 (W.D.La. 1979), in which it rejected all of Hugh Hunt's Rule 12(b) claims and held that the January 16 settlement agreement was binding on Hugh Hunt and that all of the provisions of the master settlement agreement were within the contemplation of the earlier agreement. Accordingly, the court entered final judgment on December 27, 1979, ordering Hugh Hunt to execute the master settlement agreement.

Hugh Hunt now appeals from this order. He does not argue with the district court's ruling under Rule 12(b) and does not seek to reassert his Rule 60(b) motion. Rather, he raises a confused variety of factual and legal challenges to the memorandum ruling and order of the district court. These arguments fall roughly into the following categories: (1) that there was no "meeting of the minds" and therefore no contract in the January 16 meeting; (2) that he may avoid the contract under doctrines of duress, undue influence and failure of consideration; (3) that the master settlement agreement is not a reasonable expression of the terms of the January 16 agreement; and (4) that certain provisions of the agreement are *contra bones mores* under Louisiana law. We deal with these arguments in turn after determining the applicable state law and reviewing the circumstances of the January 16 agreement.

I. CHOICE OF LAW

[1, 2] A threshold question in this case is the choice of law by which the settlement agreement should be judged. Although federal courts possess the inherent power to enforce agreements entered into in settlement of litigation,[1] the

1. *E.g., Pearson v. Ecological Science Corp.*, 522 F.2d 171 (5th Cir. 1975), *cert. denied sub nom. Skydell v. Ecological Science Corp.*, 425 U.S. 912, 96 S.Ct. 1508, 47 L.Ed.2d 762 (1976); *Massachusetts Casualty Insurance Co. V. Forman*, 469 F.2d 259 (5th Cir. 1972); *Cia Anon Venezolana de Navegacion v. Harris*, 374 F.2d 33 (5th Cir. 1967).

construction and enforcement of settlement agreements is governed by principles of state law applicable to contracts generally. *E.g., Florida Education Association, Inc. v. Atkinson*, 481 F.2d 662 (5th Cir. 1973). In accordance with *Klaxon Co. v. Stentor Electric Manufacturing Co., Inc.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941), and its progeny, federal courts must, in such cases, apply the choice of law rules of the forum state, in this case Louisiana. Thus the district court correctly referred to La.Civ.Code Art. 10, which provides, in pertinent part:

> The form and effect of public and private instruments are governed by the laws and usages of the places where they are passed or executed.

It is not immediately clear how the district court went from this provision to the conclusion that Texas law applies in this case; the contract of settlement was executed in Louisiana.[2] Nevertheless, a close analysis of the applicable choice of law principles convinces us that Texas law does govern the interpretation of the settlement agreement.

Louisiana choice of law rules (and their interpretation by federal courts) have been in a state of confusion for some time. During the 1960's a line of cases evolved in both the

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2. The district court reasoned as follows, 483 F.Supp. at 837:

> The final subject of dispute consists of Hugh's related objections to the choice of Texas law to govern the agreement, and to the waiver of future inheritance rights. Hugh properly asserts that Louisiana law looks with disfavor upon attempts to waive future inheritance rights. However as none of the parties reside in Louisiana, that substantive policy is of no consequence. Article 10 of the Civil Code requires application of the law of the place where the contract is to have effect, which, in the case of the persons being released by Hugh, is Texas. Hugh does not claim that the waiver is void under the law of Texas.

Despite this analysis, the district court relied on Louisiana law elsewhere in its opinion. 483 F.Supp. at 834, 835, 837. Similarly, both parties to this appeal rely inconsistently on both Louisiana and Texas law.

intermediate Louisiana appellant courts[3] and in this court[4] which applied a more modern approach to choice of law rules – looking to the "center of gravity," or to the state with the "most significant contracts" – rather than applying the literal wording of the Louisiana Code. *See generally Restatement (Second) of Conflict of Laws* §§ 6, 188 (1071). But this approach was rejected by the Louisiana Supreme Court in *Johnson v. St. Paul Mercury Insurance Co.*, 236 So.2d 216 (La.Sup. Ct. 1970). We subsequently recognized Louisiana's adherence to the strict wording of Article 10 in *Lester v. Aetna Life Insurance Co.*, 433 F.2d 884 (5th Cir.), *cert. denied*, 402 U.S. 909, 91 S.Ct. 1382, 28 L.Ed.2d 650 (1971), but upheld the district court's application of the modern approach by carving out an exception to the rule of *Klaxon*. We held that we were not bound by the choice of law rule of the forum state where only a "false conflict" exists, that is, where only one state has any legitimate interest in the case. Our holding was not an attempt to overrule the Louisiana Supreme Court's strict interpretation of Article 10, or to eviscerate *Klaxon*; rather, we sought to except the general *Klaxon* rule only in those extreme cases where "'. . . one of two states related to a case has a legitimate interest in the application of its law and the other has none.'" 433 F.2d at 890. Our exception was, however, rejected by the Supreme Court in *Day and Zimmerman, Inc. v. Challoner*, 433 U.S. 3, 96 S.Ct. 167, 46 L.Ed.2d 3, *overruling Challoner v. Day and Zimmerman, Inc.*, 512 F.2d 77 (5th Cir. 1975), in a short *per curiam* opinion which concluded:

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3. *E.g., Universal C.I.T. Credit Corp. v. Hulett*, 151 So.2d 705 (La.App., 3rd Cir. 1963) (Judge Tate); *Doty v. Central Mutual Insurance Co.*, 186 So.2d 328 (La.App., 3rd Cir. 1966) (concurring opinion of Judge Tate); *Blanchard v. Blanchard*, 180 So.2d 564 (La.App., 3rd Cir. 1965) (concurring opinion of Judge Tate). In these cases Judge Tate found authority for the modern approach in the second sentence of La.Civ.Code Art. 10, which provides:

> But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect.

4. *E.g., Franklin v. Texas International Petroleum Corp.*, 324 F.Supp. 808 (W.D.La. 1971).

> By parity of reasoning, the conflict-of-laws rules to be applied by a federal court in Texas must conform to those prevailing in the Texas state courts. A federal court in a diversity case is not free to engraft onto those state rules exceptions or modifications which may commend themselves to the federal court, but have not commended themselves to the State in which the federal court sits.

423 U.S. at 4, 96 S.Ct. at 168. *See generally* C. Wright, *Law of Federal Courts* § 57, at 264-265 (3rd ed. 1976).

Following *Challoner*, we are bound by the interpretation of Article 10 adopted by the Louisiana courts. Subsequent to *Challoner*, however, the Louisiana Supreme Court overruled *Johnson* in favor of a more modern approach to conflicts of law. *Jagers v. Royal Indemnity Co.*, 276 So.2d 309 (La.Sup. Ct. 1973). Unfortunately, *Jagers* is far from clear. *Jagers* apparently created an exception to the strict Louisiana choice of law rules by holding that only a "false conflict" existed in the case; that is, the Louisiana Supreme Court adopted the reasoning of this court in *Lester* and *Challoner* and held that conflicts of law principles did not apply in cases of "false" conflicts.[5] But *Jagers* can be read to go even farther than this. After holding that the state choice of law rule did not apply in cases of false conflict, the court cryptically stated:

> That some modern methods for determining whether to apply the law of the forum are faulty in some respects should not deter a court in the application of the law of the forum to its citizens, when not otherwise prohibited.

A footnote to this statement is as follows:

> For choice-of-law principles, see Restatement, Second, Conflict of Laws, § 6 (1969):

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5. In *Challoner*, the Supreme Court rejected the "false conflicts" doctrine as an exception to the rule of *Klaxon*. But it left the door open for state courts to adopt the doctrine as an exception to their own local choice of law statutes. *Challoner v. Day and Zimmerman, Inc.*, 423 U.S. 3, 5, 96 S.Ct. 167, 168, 46 L.Ed.2d 3 (1975) (Blackmun, J., concurring).

"(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law,

"(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

"(a) the needs of the interstate and international systems,

"(b) the relevant policies of the forum,

"(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

"(d) the protection of justified expectations,

"(e) the basic policies underlying the particular field of law,

"(f) certainty, predictability and uniformity of result, and

"(g) ease in the determination and application of the law to be applied."

276 So.2d at 312.

[3] Shortly after *Jagers*, this court was faced with a Louisiana choice of law question in *Brinkley & West, Inc. v. Foremost Insurance Co.*, 499 F.2d 928 (1974). We concluded that the Louisiana Supreme Court's opinion in *Jagers* in effect adopts the analysis of the *Restatement* as the law of Louisiana. Still the *Restatement* arguably allows for the strict interpretation of Article 10 in cases involving a real (as opposed to "false") conflict of law, since the interest analysis is to be used only where there is no statutory directive (*i.e.*, Article 10) to the contrary. But after finding that the conflict in *Brinkley & West, Inc.* was a real one, we went on to apply the interest analysis set forth in the second paragraph of the *Restatement* provision, thereby implicitly finding that Article 10 is not to be strictly construed even in cases of real conflicts. Since *Brinkley & West, Inc.* was decided, the *Jagers* opinion has been interpreted by at least two intermediate appellate courts in Louisiana. *Brannon v. Babin*, 366 So.2d 955 (La.App., 1st Cir. 1978); *Sutton v. Langley*, 330 So.2d 321 (La.App., 2d Cir.),

writ denied, 332 So.2d 805, 820, and 333 So.2d 321 (1976). In both cases the court held that the modern "interest analysis" is the correct choice of law rule in Louisiana – whether the conflict is "real" or "false." We can therefore reaffirm our analysis in *Brinkley & West, Inc., supra*, and conclude (1) that the current approach to the choice of law in Louisiana is that embodied in the *Restatement, supra*, and (2) that under that approach the interest analysis of the second paragraph of the *Restatement* is to be applied in all cases, regardless of the literal reach of Article 10.

[4] The district court found that Texas has a greater interest in this settlement than does Louisiana and that the law of Texas accordingly must govern the interpretation and validity of the settlement agreement. As virtually all of the parties to the settlement agreement are residents of Texas (only Mrs. Lee is a residence of Louisiana), and the bulk of the property at issue is located in Texas, the district court's conclusion is clearly correct. We note that the parties do not challenge that holding.[6]

II. THE JANUARY 16 AGREEMENT

The judge began the January 16 meeting in his chambers by explaining the purposes of the conference as follows:

> Now, as I understand it and for the purpose of the record, there have been discussions concerning a negotiated settlement of this lawsuit, that the parties are in agreement and for the purpose of placing the terms of the agreement in writing, the court has made use of and is now making use of the instantaneous court reporters who will transcribe now the terms of the settlement, which will be then typed and after being typed will be signed by all

6. Louisiana will honor a stipulation of the parties regarding the choice of law. La.Civ.Code Art. 11; *Fine v. Property Damage Appraisers, Inc.*, 393 F.Supp. 1304 (E.D.La. 1975). The master settlement agreement does provide that Texas law shall govern the agreement, and the district court adds that such was the implicit understanding of the original agreement (since the parties must have intended an enforceable contract, and

> parties to the lawsuit and other members of both families will have a place to sign their names indicating their full agreement with the terms.

Record at 3456. The judge then requested counsel for the parties to list the provisions of the settlement agreement. Before the parties listed these terms, the judge stated again:

> Well, I am providing these offices for the purpose of the parties and when you all have reached an agreement and are ready to execute it, then I want to supervise it.

Record at 3456. The attorney who stated the agreement began by saying the following:

> Following the negotiations between all parties that are present here and that the parties here represent that they are authorized to speak on behalf of the other members of their family or respective families and in order to bring this entire litigation to a conclusion and in addition to this litigation any other claims of any nature or kind which any member of the Hunt family may have one against the other of any nature or kind, the following agreement has been reached.

Record at 3458. During the course of the discussion, Hugh Hunt expressed some doubt as to his ability to legally sign away his children's rights. And, when attorneys for the Hunt Estate said that each branch of the Hunt family would release all of its rights of inheritance from other branches of the family, Hugh Hunt disagreed that this had been the understanding reached prior to the conference. The court appears to have agreed with counsel for the Hunt Estate. The following colloquy then took place:

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under Louisiana law, according to Hugh Hunt's argument, there is some doubt about this contract's validity). 483 F.Supp. at 837. The choice of law is not mentioned in the January 16 conference, however, and there is no indication that anyone was aware of Hugh Hunt's arguments under Louisiana law at that time. Since the applicable choice of law rule comes to the same result, we need not reach this question.

THE COURT: In other words, all of the parties who have discussed this matter up to this point have understood that this was a final settlement.

MR. HUGH LEE HUNT: Your honor, I want to make a statement. I am here because my mother is taking four pills a day for her heart. I have been advised by my attorneys that if she dies, her rights die and I will sign whatever papers you want, and I would like to leave the chambers, please.

THE COURT: You may, sir.

(Thereupon Mr. Hugh Lee Hunt left the chambers.)

Record at 3468. At this point the rest of the parties completed their statement of the terms of the agreement. At the conclusion of the conference, the judge had the transcript typed up. At the end of the transcript is a place for the signatures of all the parties; Hugh Hunt's signature appears there. along with that of other parties to the agreement.

III. THE "MEETING OF THE MINDS" IN THE JANUARY 16 AGREEMENT

[5, 6] Hugh Hunt contends that there was no "meeting of the minds" in the January 16 conference, and that the transcript of that meeting therefore cannot represent a final binding contract under applicable state law. Most of this argument consists of challenges to factual findings of the district court. These include: (1) that Hugh Hunt did intend to bind himself by his signature to the January 16 transcript; and (2) that he understood the January 16 agreement to be a complete statement of the terms of the settlement. 483 F.Supp. at 835. Insofar as material facts are disputed in the course of a proceeding to enforce a settlement agreement, the district court should hold a hearing to obtain evidence on the factual matters in dispute. *Massachusetts Casualty Insurance Co. v. Forman*, 469 F.2d 259 (5th Cir. 1972). The trial judge did hold a full hearing on this petition and heard testimony from Hugh Hunt and

from his mother, Mrs. Lee. Factual findings pursuant to such a hearing must be accepted unless they are "clearly erroneous" within the meaning of Fed.R.Civ.P. 52(a). *Pearson v. Ecological Science Corp.*, 522 F.2d 171 (5th Cir. 1975), *cert. denied sub nom. Skydell v. Ecological Science Corp.*, 425 U.S. 912, 96 S.Ct. 1508, 47 L.Ed.2d 762 (1976). On the basis of the record, and in particular the transcript of the January 16 meeting, we cannot say that these findings were clearly erroneous.

[7, 8] Hugh Hunt also argues that it was his understanding that counsel for the Hunt Estate would require the signature of his wife and of his descendants, while in fact the Estate did not insist on these signatures. The district court incorrectly relied on Louisiana law in holding that this misunderstanding did not negate the "meeting of the minds" in the January 16 agreement. 483 F.Supp. at 834–835. But the result is no different under Texas law. Whether these signatures would be required is not relevant to Hugh Hunt's obligations. They were purely for the benefit of the Hunt Estate, as they served only to waive rights against the Estate and those claiming under it. The Estate therefore has the right to waive the requirement without forfeiting any other right under the agreement; under Texas law, a party to a contract may waive the performance of any contractual provision that is to his benefit. *E.g., Gulf Production Co. v. Continental Oil Co.*, 164 S.W.2d 448 (Tex. 1942). Nevertheless, Hugh Hunt maintains that he *believed* that he would not be bound until his wife and descendants signed, and that consequently he signed the transcript under a mistake of law. In the first place, mistake generally does not excuse contractual obligations unless it is mutual (or is induced by the other party). *E.g., Anderson Brothers Corp. v. O'Meara*, 306 F.2d 672 (5th Cir. 1962). There is no suggestion in the record that any other party to the agreement was under the same misimpression of Texas law, or that any party induced Hugh Hunt's misunderstanding. In the second place, a pure mistake of law generally cannot excuse contractual obligations. *E.g., Hall v. Hays*, 441 S.W.2d 275 (Tex.Civ.App.–El Paso 1969, no writ history); *Ussery v. Hollebeke*, 391 S.W.2d 497 (Tex.Civ.App.–El Paso

1965, writ ref. n. r. e.); *Harris v. Sanderson*, 178 S.W.2d 315 (Tex.Civ.App.–Eastland 1944, 24i5 ref. w. o. m.). Therefore, the fact that Hugh Hunt may have mistakenly understood the applicable law to exempt him from the binding force of his signature cannot excuse him from the settlement agreement.

IV. DURRESS, UNDUE INFLUENCE, AND FAILURE OF CONSIDERATION

[9, 10] Hugh Hunt urges several affirmative defenses to any contract which may have been formed in the January 16 conference. These defenses center around the emotional strain and pressures of the settlement negotiations:

> The Court should consider the posture in which Hugh Hunt found himself at that tense and compelling moment in this already emotionally charged litigation. He unhappily discovered himself inexorably drawn into the vortex of these settlement negotiations, without benefit of personal legal counsel. He thusly became torn between his own innermost feelings of dismay at what seemed to be transpiring and the unclear effects thereof on his personal welfare, as opposed to what legal counsel for his mother were strongly pressing upon him as being in her best interests.

Appellant's Brief at 25. Hugh Hunt may indeed have been under great pressure at this time, and the record shows that the emotional strain caused him to leave the meeting before it was completed. But these facts do not establish either duress or undue influence under Texas law. One state court has defined duress as follows:

> . . . our courts of Texas have consistently followed the rule, as a matter of law, that (1) there can be no duress unless there is a threat to do some act which the party threatening has no legal right to do; (2) there must be some illegal exaction or some fraud or deception; (3) the restraint must be imminent and such as to destroy free agency without present means of protection.

Tower Contracting Co., Inc. of Texas v. Bruden Brothers, Inc., 482 S.W.2d 330, 335 (Tex.Civ.App.–Dallas 1972, writ ref. n. r. 3.). *See also Mitchell v. C. C. Sanitation Co.*, 430 S.W.2d 933 (Tex.Civ.App.–Houston [14th dist.] 1968, writ ref. n. r. e.); *Sanders v. Republic National Bank of Dallas*, 389 S.W.2d 551 (Tex.Civ.App.–Tyler 1965, no writ history). In order to prove undue influence, one must demonstrate that "persuasion, entreaty, importunity, argument, intercession, and solicitation" were so strong as to "subvert and overthrow the will of the person to whom they are directed." *DeGrassi v. DeGrassi*, 533 S.W.2d 81, 85 (Tex.Civ.App.–Amarillo 1976, writ ref. n. r. e.). *See Curry v. Curry*, 270 S.W.2d 208 (Tex. 1954). Duress and undue influence are difficult defenses to establish. Certainly they are not suggested by the facts of this case; emotional strain and negotiation pressures are not by themselves enough to overcome the will of the party to a contract, and there is no evidence that they resulted from threats, illegal exaction, fraud or deception.

[11-13] Hugh Hunt makes the related argument that he received nothing in return for his signature on the transcript of the January 16 meeting. It is true that the agreement guaranteed him none of the final settlement amount, which was to be distributed in accordance with his mother's directions. But a party need not receive the benefit of a contract in order to be bound by it; it is enough that the party seeking to hold another to the contract suffer a legal detriment. So long as consideration is sufficient to support the contract, which party actually receives the consideration is irrelevant. *E.G., Loomis v. Skillerns–Loomis Plaza, Inc.*, 593 S.W.2d 409 (Tex.Civ.App.–Dallas 1980, no writ history); *Mercantile National Bank at Dallas v. Hudgens*, 412 S.W.2d 364 (Tex.Civ.App–Ft. Worth 1967, writ ref. n. r. e.); *Minton v. Riverside State Bank*, 399 S.W.2d 196 (Tex.Civ.App.–Ft. Worth 1966, no writ history).

V. THE MASTER SETTLEMENT AGREEMENT

Hugh Hunt argues that the master settlement agreement which the district court ordered him to execute is not a

reasonable statement of the terms of the January 16 agreement. The most important area of dispute centers around the scope of the releases contained in the final document. In brief, the master settlement agreement provides for the following releases:

1. Mrs. Lee and her descendants release the other parties from all claims arising from the relationship between Mrs. Lee and H. L. Hunt, including the birth of children from the relationship;

2. All parties accept as valid the duly probated will of H. L. Hunt;

3. All parties waive all forced heirship rights;

4. All parties agree not to prosecute or aid in the prosecution of suits arising from the relationship between Mrs. Lee and H. L. Hunt, including suits to determine status;

5. Mrs. Lee and her descendants assign to the other parties, in shares set forth in the agreement, their rights of inheritance from those parties, including all rights under state intestacy statutes and all testate claims that are not specifically established (or reestablished) after the date of the agreement; and all other parties assign their like rights to inheritances from Mrs. Lee and her descendants, to Mrs. Lee and her descendants in specified shares;

6. All parties agree to dismiss all on-going litigation among themselves, with the exception of one certain suit brought by Hugh Hunt in Georgia; and

7. Mrs. Lee and her descendants release any and all claims which they have against the other parties which do not arise out of the relationship between Mrs. Lee and H. L. Hunt but are already in existence at the date of the agreement; and the other parties likewise release Mrs. Lee and her descendants.

Record at 3255-3270. Hugh Hunt argues that these provisions depart from the intent of the earlier agreement by broadening the scope of the proposed releases. First, as Hugh Hunt describes the January 16 agreement it contemplated a release of

only those claims which arose out of the alleged putative marriage between Mrs. Lee and H. L. Hunt, and did not call for a release of either present or future claims which are independent of that relationship. (*Cf.* paragraph 7 above.) Second, he maintains that the January 16 agreement did not contemplate the release of inheritance rights other than those derived from the relationship between Mrs. Lee and H. L. Hunt. Although it is not clear precisely what rights he is referring to, they would appear to be testate rights, *i.e.*, claims which Mrs. Lee and her descendants may have by virtue of wills written by other parties to the settlement agreement. (*Cf.* paragraph 5 above.) And third, Hugh Hunt maintains that the January 16 agreement did not call for a relinquishment by him of his children's rights. (*Cf.* paragraphs 1, 2 and 5 above.)

The transcript shows that the agreement was not clear in all respects on January 16, and there is ample room for argument about the intended scope of the releases.[7] With respect

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7. The attorney for the Hunt Estate stated the agreement as follows:

> MR. COOK (counsel for the Estate): Item two. That Mrs. Lee and all of her descendants would sign a release releasing all parties from any claim, including future inheritance rights in the Estate of any members of the Hunt family, which release will contain appropriate indemnity provisions.
>
> MR. FRITCHIE (counsel for Mrs. Lee): You are now talking—excuse me—I have to ask you at this point when you say "All rights of future inheritance" he means by operation of law?
>
> THE COURT: By operation of law.
>
> MR. COOK: That is right.
>
> MR. FRITCHIE: When you say, "Mrs. Lee and all of her descendants," you are talking about Mrs. Lee and those of her descendants who are of the age of majority?
>
> MR. COOK: And their respective spouses, and I think at this time it might be well to list all of the parties to be included.

Record at 1263. Later in the meeting Hugh Hunt was asked whether his children would sign the agreement. The following colloquy then took place:

> MR. HUGH LEE HUNT: You see, we never talked about inheritance rights, God forbid that something should happen that the entire first family should be wiped out, let's say something like that did happen.

to the agreement's release of claims unrelated to the relationship between Mrs. Lee and H. L. Hunt, there is language in the transcript describing the agreement as "a final settlement" and a release "from any claim." But the court also describes the agreement as only a settlement "as to this lawsuit and as to any possible inheritance rights." There is an even more direct conflict on the issue of inheritance rights. When asked about them at the outset, counsel for the Hunt Estate agreed with

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MR. HIRSCHKOP (counsel for Herbert and Lamar Hunt): Give you all inheritance rights?

MR. HUGH LEE HUNT: We would have inheritance rights I understand by Texas law.

MR. COOK: This is what is being settled at this time, this is being released.

MR. HUGH LEE HUNT: We never agreed to this, there was no discussion on this.

MR. HUNTER: Yes, there was.

MR. HUGH LEE HUNT: There was discussion on the fact that we would not do anything on public statements and everything else like that.

MR. FRITCHIE: That you would give up inheritance rights.

MR. HUGH LEE HUNT: Anything having to do with this suit, with the issue of this suit we would not be involved in, but if you remember there was some discussion about–

MR. HUNTER: (Interposing) What inheritance rights is anybody conceivably talking about other than possibly collateral heirs inheriting from someone else if they did not leave a will or something?

THE COURT: That's the question and that is the only thing that is being discussed and it was discussed here in chambers that the settlement was as to this lawsuit and as to any possible inheritance rights should they occur, and I understand that to be the basis of the settlement also.

MR. HUNTER: I understand that, too, Judge there is no question.

THE COURT: In other words, all of the parties who have discussed this matter up to this point have understood that this was a final settlement.

Record at 1265, 1267. It was at this point that Hugh Hunt became upset and left the judge's chambers. No further discussion involved the releases to be included in the final document, aside from an agreement among the parties that all lawsuits would be dismissed except for Hugh Hunt's existing suit in Georgia.

counsel for Mrs. Lee that "all rights of future inheritance" meant only such rights as exist "by operation of law," which would appear to exclude testate rights. But at a later point in the transcript the court refers to "any possible inheritance rights should they occur," and appears to disagree with Hugh Hunt's understanding that the parties had intended to limit the releases to rights related to the subject matter of the lawsuit. As to releases which affect the rights of the signatories' descendants, Hugh Hunt expressed some doubt as to his ability to "legally sign away any of my children's rights." These doubts were never specifically addressed by counsel for the Hunt Estate, and the master settlement agreement does in effect waive rights of the signer's descendants.[8]

[14, 15] Under Texas law, the interpretation of an unambiguous contract – as well as the determination of whether or not a contract is ambiguous – is a legal question. But once it is determined that a contract is ambiguous, the determination of the actual intent of the parties becomes a factual question. *Trinity Universal Insurance Co. v. Ponsford Brothers*, 423 S.W.2d 571 (Tex. 1968). *See Pletz v. Christian Herald Association*, 486 F.2d 94 (5th Cir. 1973); *Henningan v. Chargers Football Co.*, 431 F.2d 308 (5th Cir. 1970); *Roy L. Jones, Inc. v. Home Transportation Co.*, 422 F.2d 179 (5th Cir. 1970). Hugh Hunt's interpreatation of the intent of the January 16 agreement is arguable on the basis of vague and conflicting statements in the transcript. But we find that the transcript agreement is ambiguous with respect to these issues, and therefore we must deter to the trail court's resolution of the factual issue of intent unless his findings are "clearly erroneous." Fed. R.Civ.P. 52(a). The trial court considered Hugh Hunt's arguments on the scope of the releases contemplated by the January 16 agreement and concluded that the intent of the January 16 agreement is fairly embodied in the master settlement

8. The master settlement agreement purports to bind the heirs, successors, assigns and legal representatives of all of the signatories. Under Texas law, the waiver of future interests and expectancies may contractually bind the descendants and other successors of the actual signatory to the agreement. *E.g., Trevino v. Turcotte*, 564 S.W.2d 682 (Tex. 1978); *McConnel v. Corgey*, 262 S.W.2d 944 (Tex. 1953).

agreement.[9] 483 F.Supp. at 854-835. In this case the trial court's findings are due particular deference, for the court presided over the trial and was present at the formation and execution of the agreement it was called upon to interpret. On the basis of the transcript of the January 16 meeting, we cannot say that the district court's findings were clearly erroneous.

In addition to the scope of the releases Hugh Hunt points to several other discrepancies between the January 16 agreement and the master settlement agreement. First, he notes that the requirement for the signatures of Hugh Hunt's descendants was dropped in the final document. But as we have already stated, the Hunt Estate had preserved a right to do this. Second, he argues that the actual distribution of the settlement funds is not set out in the January 16 agreement. This distribution was left open so that Mrs. Lee could thereafter decide precisely how the money should be distributed for the most favorable tax treatment. 483 F.Supp. at 836. Hugh Hunt made no objection to this arrangement and we do not believe that the deferral of this matter is relevant to his obligations. Third, Hugh Hunt maintains that the provision in the master settlement agreement stipulating that Texas law shall govern the interpretation of the agreement was not discussed or contemplated on January 16. It is true that the transcript of the January 16 meeting includes no reference to the parties' contractual choice of law; but since Texas law would govern in the absence of an agreement, the provision has no effect on

9. These arguments are not all discussed in the opinion of the district court. That opinion does not explicitly deal with Hugh Hunt's contentions that (1) the January 16 agreement did not even call for a release of *present* claims that were unrelated to the relationship between Mrs. Lee and H. L. Hunt, and (2) the January 16 agreement did not contemplate his release of his children's rights. We note that Hugh Hunt's argument to the district court did not clearly delineate the different aspects of his disagreement with the release provisions of the master settlement agreement. Memorandum of Hugh L. Hunt in Opposition to Defendant's Motion to Enforce the Settlement Agreement, Record at 2825. In the context of the arguments made to the district court, and of that court's order and opinion, it is clear that the district court nevertheless rejected these contentions as a matter of fact.

any of the parties. Finally, Hugh Hunt argues that the master settlement agreement does not honor the Hunt Estate's purported agreement to obtain new trustees for certain trusts previously established for the benefit of Mrs. Lee's children and grandchildren. But the representation of counsel for the Hunt Estate in the January 16 meeting was only that:

> It is understood that Mrs. Lee and her children may want to arrange for the appointment of a different advisory committee or a different trustee. Ray Lee Hunt is agreeable to this being done provided it can be legally done. He will cooperate in every way to provide for a change in either the advisory committee or the trustee.

Record at 1282. As the district court noted, such a change was not possible under applicable state law. 483 F.Supp. at 836. We conclude that the district court correctly found that the master settlement agreement is a reasonable embodiment of the intentions of the parties in the January 16 agreement. and that Hugh Hunt may properly be required to execute it.

VI. THE PURPORTED ILLEGALITY OF THE CONTRACT

[16] Finally, Hugh Hunt argues that certain provisions of the master settlement agreement are *contra bones mores* under Louisiana law. In particular, he points to Louisiana cases which prohibit the renunciation of inheritance rights which depend on the death of some living person, and to a Louisiana constitutional provision which prohibits discrimination on the basis of illegitimacy in matters of property or inheritance. We doubt that these policies, even if applicable, would void the entire contract. So long as the consideration is legal and the provisions are separable, those contractual provisions which are not illegal may still be enforced. *Williams v. Williams*, 569 S.W.2d 867 (Tex. 1978). But it is not necessary to reach this question or to determine the precise relevance of the asserted Louisiana policies to the master settlement agreement. As we determined *supra*, it is the law of Texas that governs this

contract. And, although the district court made the same determination, Hugh Hunt has at no point contended that any provision of the agreement is contrary to Texas law.

We conclude that the January 16 settlement agreement embodied in the transcript of the conference held that day in the judge's chambers is an enforceable contract of settlement under Texas law and is binding on Hugh Hunt. We also conclude that the master settlement agreement reasonably represents the intent of the January 16 agreement, and that Hugh Hunt may be bound by its terms. The judgment of the district court is affirmed in all respects.

AFFIRMED.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(Filed January 13, 1981)

No. 80-3211

MRS. FRANIA TYE LEE,
Plaintiff,

versus

RAY LEE HUNT, Executor of
the Estate of H. L. Hunt,
Defendant-Appellee,

versus

HUGH S. HUNT,
Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING

(January 13, 1981)

Before: GEE, RUBIN and RANDALL, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Carolyn Daniel Randall
United States Circuit Judge

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

(Filed December 27, 1979)

MRS. FRANIA TYE LEE,
Plaintiff,

VS. CIVIL ACTION NO. 76-0628

RAY LEE HUNT, Executor of
the Estate of H. L. Hunt,
Defendant.

FINAL JUDGMENT

This cause came on before the Court upon the Petition to Enforce Settlement Agreement (the "Petition") filed by Ray Lee Hunt, Executor of the Estate of H. L. Hunt (the "Estate"). The Petition requested, among other things, that the Court enforce against Hugh Lee Hunt, also known as Hugh S. Hunt ("Hugh"), the settlement agreement (the "Settlement") entered into on January 16, 1978, by the parties in the main action and certain other persons interested therein (including Hugh). Such request for enforcement asked, among other things, that the Court order Hugh to execute a "Master Settlement Agreement" and seventeen "Assignment of Expectancy Agreements" (collectively referred to herein as the "Settlement Documents") deposited with the Court pursuant to a "Deposit Agreement" (herein so called) on September 26, 1978, and order Hugh to dismiss a certain lawsuit as required of him by the Settlement. A plenary hearing on the Estate's Petition was held on December 7, 1978, at which the Court received evidence concerning the issues raised in the Petition. Having considered all of the evidence, the pleadings, the arguments and briefs of counsel, and all other matters properly before the Court, and in conformity with and pursuant to

the Memorandum Ruling entered by the Court on December 19, 1979, the Court is of the opinion that the Estate is entitled to the relief which it seeks in its Petition.

ATTEST: A TRUE COPY
DATE 12-27-1979
ROBERT H. SHEMWELL, CLERK
By /s/ Troy O. Sandish
Deputy Clerk, U.S. District Court
Western District of Louisiana

Accordingly, it is DECLARED, ADJUDGED, and DECREED that the Settlement entered into on January 16, 1978 is a legally enforceable contract which is in all regards binding on each of the parties to it (consisting of Frania Tye Lee, the Estate of Howard F. Lee, Mark Steven Lee, Haroldina Hunt Lee Franch, Ronald Andrew Cartledge, Hugh Lee Hunt, Margaret Hunt Hill, Haroldson L. Hunt, Jr., Caroline Hunt Schoellkopf, Nelson Bunker Hunt, William Herbert Hunt, Lamar Hunt, Mrs. H. L. (Ruth Ray) Hunt, Ray Lee Hunt, Ruth June Hunt, Helen Hunt Kreiling, Swanee Hunt Meeks, and the Estate) and that by entering into the Settlement, each of the parties to it (including Hugh) were and, as hereby declared, are legally bound by and required to abide by the terms and conditions specified in the Settlement Documents, which documents are captioned and referenced as follows (the terms of all of which documents are incorporated into this Judgment by reference):

Caption	Reference
Master Settlement Agreement	Attached as Exhibit A to the Deposit Agreement, an original copy of which was received as part of Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing before the Court.
A series of seventeen Assignment of Expectancy	Original copies of which were deposited with the Court pursuant to the

Agreements (numbered 1 through 17 in the top right-hand corner)

Deposit Agreement on September 26, 1978, and copies of which were received as part of Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing before the Court.

As provided in the Deposit Agreement, the Clerk of this Court shall retain one original copy of each of the Settlement Documents as part of the permanent record of this proceeding, which copies shall be marked by the Clerk for identification with this Judgment.

It is ORDERED that Hugh fully execute the Settlement Documents previously tendered to the Clerk of this Court by the other parties to the Settlement on or before 5:00 P.M., Thursday, December 27, 1979, failing which the Clerk of this Court shall on Friday, December 28, 1979 execute the Settlement Documents by signing Hugh's name in the appropriate spaces, which execution by the Clerk shall, pursuant to Rule 70 of the Federal Rules of Civil Procedure, have like effect as if performed by Hugh.

It is further ORDERED that Hugh shall, within thirty days from the date of entry of this Judgment, cause that certain action styled "Hue R. Lee, et al. v. State of Louisiana, et al," being Cause Number 181,791 – Division "I," pending in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana (the "State Court Action") to be dismissed by filing in the State Court Action a motion to dismiss the State Court Action with prejudice, failing which the Clerk of this Court shall, immediately upon the expiration of such thirty-day period, execute such motion to dismiss by signing Hugh's name to it and file such motion in the State Court Action, which execution and filing by the Clerk shall, pursuant to Rule 70 of the Federal Rules of Civil Procedure, have like effect as if performed by Hugh.

It is further ORDERED that the Clerk of this Court, after (1) execution by Hugh, or for him by the Clerk, of the Settlement Documents, as ordered herein, and (2) the filing of the

executed motion to dismiss in the State Court Action by Hugh, or for him by the Clerk, as ordered herein, distribute the Settlement Documents previously deposited with him at the time specified in and in accordance with the "Deposit Agreement" attached to the Petition.

It is further ADJUDGED that the dismissal with prejudice of the action of Frania Tye Lee against Ray Lee Hunt heretofore ordered by Judgment of this Court dated January 23, 1978 be and is hereby reconfirmed in all respects.

It is further ORDERED that the entire record in this proceeding be placed under seal and preserved under lock, not to be opened except by order of this or a superior court. The docket sheet, the official minutes and the text of this Judgment (excluding the Master Settlement Agreement and Assignment of Expectancy Agreements referenced herein, which shall be placed under seal and lock as provided in the first sentence of this paragraph) shall be exempt from the order to seal the record.

DATED at Shreveport, Louisiana this 27th day of December, 1979.

/s/ Tom Stagg
TOM STAGG
UNITED STATES DISTRICT JUDGE

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

(Filed December 19, 1979)

FRANIA TYE LEE

versus CIVIL ACTION NO. 76-0628

RAY LEE HUNT, Executor of the Estate of H. L. Hunt

MEMORANDUM RULING

This action comes again before the court, this time on the motion of defendant to enforce the settlement agreement against Hugh S. Hunt (Hugh).[1] Although not formerly a party to this litigation, Hugh, the plaintiff's only living son, has from its inception been deeply involved in the lawsuit, if not the moving force behind it. He has now been joined as a party to the motion and is the only person involved in the settlement negotiations who has not executed the final settlement agreement.

I.

The allegations of plaintiff's Complaint, more fully discussed elsewhere[2], can be summarized as follows. Mrs. Lee met "Franklin" Hunt in Tampa, Florida and they were married in that city on November 11, 1925. Shortly thereafter, they moved to Shreveport, Louisiana where two children were born to the marriage. In 1930, the family moved to Dallas, Texas, where a third child was born. In May of 1934, Mrs. Lee

1. Also referred to in the record as "Hue R. Lee," "Hue R. Hunt," and "Hugh Lee Hunt."

2. *See Lee v. Hunt*, 431 F.Supp. 371 (W.D. La. 1977); *Lee v. Hunt*, 415 F.Supp. 245 (M.D. La. 1976). *See also* this Court's Memorandum Rulings of December 14, 1977, January 10, 1978, January 11, 1978, January 12, 1978, and January 13, 1978.

learned that "Franklin" Hunt was actually H. L. Hunt and that he had been married to Lyda Bunker Hunt for some years prior to 1925. A short time later Mrs. Lee moved to New York where a fourth child was born.

On January 24, 1942, after Mrs. Lee had threatened suit, Hunt paid her a substantial sum in settlement of her claims against him, though without admitting the validity of her claims. It is further alleged that Mr. Hunt promised to acknowledge in his will their purported marriage and the legitimacy of their children, and to bequeath to her and their children properties in settlement of her interest in the community. When Hunt's death revealed that he had not kept his promise, Mrs. Lee filed this action seeking to be recognized as his putative wife and declared owner of one-half of the community property acquired during the relationship. Defendant staunchly denies most of these allegations.

Following protracted pretrial proceedings, the case was tried to a jury beginning on January 9, 1978. On the morning of the sixth day of trial, after plaintiff had rested her case, the parties announced that a compromise had been achieved and an agreement was entered into by the parties and the other members of the Hunt families ("January 16 agreement"). The agreement was dictated by the parties in Chambers and signed in the presence of the Court by all concerned (or by their agents) including Hugh. Hugh was given a copy; he read it in presence of the Court and acknowledged to the court that he understood its terms. It was clearly understood that a more formal document would be executed as soon as it could be prepared. The jury was discharged and a judgment of dismissal was entered accordingly.

Hugh now claims that he did not understand the January 16 agreement to be binding and that, in any event, the more formal document executed by all of the other parties to the earlier agreement does not accurately reflect the dictated agreement. The Court disagrees with Hugh Hunt on both counts and, for reasons set out below he is obligated to execute the Master Settlement Agreement.

Before considering the merits of these contentions, however, there are several procedural objections raised by Hugh that must be addressed.

II.

Following his joinder to this action, Hugh moved to vacate the judgment of dismissal entered following the settlement, thus reopening the entire action, and, alternatively, to dismiss the proceedings against him on the basis of several provisions of Fed. R. Civ. P. 12(b). Hugh has withdrawn the motion to vacate the judgment under Rule 60(b).[3] Hugh's motion under Rule 12(b) presents questions of subject matter jurisdiction, venue, personal jurisdiction, service of process, and the sufficiency of the pleadings against him. The questions will be considered in that order.

The memorandum accompanying Hugh's motion to dismiss offers little enlightenment concerning the basis for his claim that this court lacks jurisdiction over the subject matter of the motion to enforce the settlement agreement. He appears to rely on the fact that he was not a party to the litigation that was settled. While this may be offered as a defense on the merits to the action to enforce the settlement, it has nothing to do with the subject matter jurisdiction of this Court. It is clear beyond cavil that a court may entertain an action to enforce a settlement of litigation pending before it.[4] *Pearson v. Ecological Science Corp.*, 522 F.2d 171 (5th Cir. 1975),

3. *See* the Transcript of the December 7, 1978 Hearing, at 9-11.

4. Even assuming the soundness of the recent decision in *Fairfax Countywide Citizens v. Fairfax County*, 571 F.2d 1299 (4th Cir.), *cert. denied*, 99 S.Ct. 722 (U.S. 1978) (independent basis for jurisdiction required in action to enforce settlement – as opposed to reopening the action under Rule 60(b) – unless settlement agreement is contained, or to be contained, in judgment), *but see Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir.), *cert. denied*, 97 S.Ct. 165 (U.S. 1976) (lack of diversity does not deprive court of power to enforce settlement agreement not contained in judgment), this Court has jurisdiction because Hugh is a citizen of Maryland, plaintiff is a citizen of Georgia, and defendant is a citizen of Texas.

cert. denied sub nom. Skydell v. Ecological Science Corp., 96 S.Ct. 1508 (U.S. 1976); *Massachusetts Casualty Insurance Co. v. Forman*, 469 F.2d 259 (5th Cir. 1972); *Cia Anon Venezalana de Navegacion v. Harris*, 374 F.2d 33 (5th Cir. 1967).

Hugh objects to venue on the ground that venue was held proper in the main action only because defendant waived its objection, an act which cannot be imputed to Hugh. *See Lee v. Hunt*, 431 F.Supp. 371, 379 (W.D. La. 1977). This argument fails on two counts. First, judicial economy and the policy favoring settlement as an *end* to litigation require that settlement agreements be enforced in the same court in which the litigation was pending. *Aro Corporation v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir.), *cert. denied*, 97 S.Ct. 165 (U.S. 1976); *D. H. Overmyer Co. v. Loflin*, 440 F.2d 1213 (5th Cir.), *cert. denied*, 92 S.Ct. 87 (U.S. 1971). Second, an action to enforce a settlement agreement is analogous to an action for breach of contract. *Kaspar Wire Work, Inc. v. Leco Engineering and Machine, Inc.*, 575 F.2d 530, 538 (5th Cir. 1978); *Florida Education Association, Inc. v. Atkinson*, 481 F.2d 662, 663 (5th Cir. 1973). The subject and merit of the original litigation are no longer material, the cause of action for enforcement arises out of Hugh's signing and repudiation of the agreement in this district. Thus, not only is venue proper in this district, this may be the only court in which the matter might have been brought.[5]

The memorandum in support of the motion to dismiss is also silent regarding the related questions of personal jurisdiction and insufficiency of service of process. The motion itself simply states that Hugh has not transacted any business

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5. The Court cannot agree with defendant that filing a motion to vacate the judgment simultaneously with an objection to venue constitutes a waiver of the latter. The spirit of the Federal Rules is to encourage unitary rather than fragmentary proceedings, even if this means placing inconsistent claims and defenses at once before the court. 15 Wright, Miller & Cooper, *Federal Practice and Procedure* § 3829 at 198.

or had other contacts with this state sufficient to support invocation of the long-arm statute. This is clearly not so. The negotiation and execution of a settlement agreement constitutes transaction of business and, when that agreement is the subject of a lawsuit, justifies resort to the long-arm statute. *Meetings & Expositions, Inc. v. Tandy Corporation*, 490 F.2d 714, 717 (2d Cir. 1974). Further, joinder of non-parties involved in the settlement process is a permissible alternative to an independent action. *Wood v. Virginia Hauling Co.*, 528 F.2d 423 (4th Cir. 1975); *Meetings & Expositions, Inc. v. Tandy Corporation, supra.*

Accordingly, the motion to dismiss must be denied. The challenge to the sufficiency of the pleadings under Rule 12(b)(6) will be referred to the merits, to which we must now turn.

III.

The settlement in this case is a creature of the unusual family setting in which it was born. The agreement appears at once generous and exacting, reflecting, perhaps, the powerful incentives for compromise on both sides of the table. Contrary to the normal inference offered by a settlement at this stage of the proceedings, Mrs. Lee was not negotiating from a legal position of strength. A series of evidentiary rulings issued during the trial had greatly restricted the scope of her claim and proof.

On the second day of trial, the Court ruled that Mrs. Lee could not introduce parol evidence to prove that the 1942 settlement with H. L. Hunt was not intended to encompass her claim of community property.[6] The following day the Court ruled that the civil effects of the alleged putative marriage ended in 1934 when Mrs. Lee admittedly discovered the pre-existing impediment to her marriage, namely H. L. Hunt's marriage to Lyda Bunker Hunt. Thus, the 1942 settlement was not voided by the contractual incapacity between husband and

6. *See* the "Rulings on Evidence" filed on January 10, 1978.

wife. By the same token, her claim of community property was restricted to the period from 1925 to 1934.[7] Finally, on the fourth day of trial, the Court ruled that the jury would not be allowed to consider the claim that H. L. Hunt promised to acknowledge their marriage in his will and to treat her children equally with the children of his first marriage, because she was unable to produce the corroborating witness required by the Louisiana Dead Man's Statute.[8]

Mrs. Lee's remaining response to the Estate's defense of compromise and transaction was to attempt to void the 1942 agreement on grounds of fraudulent inducement – that H. L. Hunt misrepresented, or failed to disclose, the value of the community property.[9] Beyond the difficulty of proof, this tactic faced a serious objection of prescription due to the passage of nearly thirty-four years between execution of the agreement and the filing of this suit. While none of the rulings impaired Mrs. Lee's chances of establishing the putative marriage,[10] she was aware of the substantial and potentially damaging evidence to be presented by the defendant on that issue.

Mrs. Lee thus approached the Monday morning settlement weighing the sacrifice of her opportunity for official recognition of her marriage against the benefit to herself and her family from a multi-million dollar settlement. There was also the consideration that a substantial settlement would tend

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7. *See* the Memorandum Ruling filed on January 11, 1978.

8. *See* the Memorandum Ruling filed on January 13, 1978 (together with the first part of the Ruling of January 10). The Ruling was issued before the testimony of Wright Matthews, and alludes to the possibility that he might become the necessary corroborating witness. He did not.

9. *See* the Memorandum Ruling filed on January 10, 1978, at 4-5.

10. "If the settlement was valid, it released any claim to property of H. L. Hunt by virtue of the relationship between him and Frania Tye. It does not defeat her right to be declared the putative wife of H. L. Hunt if she can establish the elements of that claim, but it bars her recovery of any property by virtue of a declaration that she was his putative wife." Memorandum Ruling of January 10, 1978, at 4.

to confirm her claim in the public mind, thereby achieving some degree of recognition for her marriage. The Estate, on the other hand, was weighing these costs against its interests in withdrawing the dispute from the public arena, avoiding the chance of a partial verdict against it, and obtaining an end to all *future* related litigation.[11] Hugh's stance in the negotiations was one of embattled concession; he neither accomplished his goal of legitimation nor shared directly in the spoils, nor was he even free to fight again another day. As his counsel, perhaps unwittingly,[12] stated in the briefs: "as an accommodation to the plaintiff, his mother, Mr. Hunt voluntarily agreed to execute a settlement which would terminate this litigation in order to enable his mother to derive whatever benefits she could from this proposed settlement.[13]

Ordinarily, this Court would summarily enforce a settlement agreement such as that dictated in Chambers on January 16. In this case, however, Hugh has raised factual questions concerning the existence of an agreement and what that agreement covers. In accordance with the teaching of *Pearson v. Ecological Science Corp.*, 522 F.2d 171, 176 n. 5 (5th Cir. 1975), and *Massachusetts Casualty Insurance Co. v. Forman*, 469 F.2d 259 (5th Cir. 1972), a plenary hearing was held on December 7, 1978 and all parties were given the opportunity to present such evidence as they deemed material. The following analysis of Hugh's objections is based on that hearing, the record, and the Court's own longstanding involvement with this lawsuit.

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11. "In the main demand, Mrs. Lee alleged she was the putative spouse of H. L. Hunt. Had she been successful in such assertion, the offspring of the relationship might be entitled to claim various sorts of inheritance rights as legitimate heirs or half-brothers or sisters of members of [the other families]." Defendant's Post Hearing Brief in Support of Petition to Enforce Settlement Agreement, filed on February 7, 1979, at 21.

12. *See* the "Reply Memorandum of Hugh L. Hunt in Reply to Post Hearing Brief in Support of Petition to Enforce Settlement Agreement", filed on February 13, 1979, at 1.

13. Memorandum in Support of Motion to Vacate or Modify Judgment and Motion to Dismiss, filed on November 22, 1978, at 2-3.

IV

When presented with a settlement and asked to enforce it, a court must first determine if a binding agreement was actually reached and, if so, what that contract provides. *Wood v. Virginia Hauling Co.*, 528 F.2d 423, 425 (4th Cir. 1975). Settlement agreements being contracts, their enforceability is governed by the whole law of the forum state. *Florida Education Association, Inc. v. Atkinson*, 481 F.2d 662, 663 (5th Cir. 1973). However, the parties are free to choose any law to govern the contract's interpretation, which must be distinguished from its validity or enforceability.

Several of the objections raised by Hugh at the hearing are directed to the validity of the January 16 agreement. First, Hugh asserts that he did not participate in any settlement negotiations prior to the January 16 conference and that he was not represented by counsel at that conference. Neither circumstance is of any consequence nor is either assertion entirely correct. Hugh's letter to this Court details his involvement in the settlement negotiations during the trial.[14] He had also been involved in retaining counsel for Mrs. Lee and had consulted with them throughout the trial.[15]

The transcript of the January 16 conference shows that Hugh was painfully aware of the effect of the agreement, he simply didn't want to permit it. Nonetheless, he stated "I will sign whatever papers you want" – and did. The pressure to which he was subjected is not the sort of duress that will relieve one of his knowing obligations. La. Civ. Code arts. 1819, 1851. *See United States v. Lamont*, 155 U.S. 303, 310 (1894). If Hugh is to void the January 16 agreement, he must

14. *See* Hugh Hunt Exhibit 1, at 2-3, filed in the record of the December 7,1978 Hearing (*e.g.*, "our intention at all times in this suit was to go for the putative wife issue without compromise with the cash part being negotiable.").

15. *Id.* at 4. ("I even asked our attorneys to hint to the other Hunt families to allow the putative if they did not have to pay any money, but our attorneys did not want to consider even mentioning that idea to them."). Hugh signed the contract retaining plaintiff's counsel and agreed to retain them if the evidence revealed any cause of action on his behalf.

fails to state the dollar amount of the settlement and that it was not intended to become binding until signed by his wife and major children. The first objection is overcome by La. Civ. Code art. 1894: "An agreement is not the less valid, though the cause be not expressed." The second objection is not so easily met.

At the outset of the settlement conference, the Court stated that the transcript would have a place for the participants "to sign their names indicating their full agreement with the terms."[16] This sobering theme was repeated throughout the agreement, as when the Court reminded Hugh, just before he left the room, "that this was a final settlement."[17] There is no reasonable basis for believing that the January 16 agreement was not intended to bind the signatories. It is true that the agreement contemplated that the spouses and major children of Mrs. Lee's children, or their representatives, would be required to sign the more formal document.[18] However, it is equally true that this requirement was inserted solely for the benefit of the Estate and other Hunt families, and could thus be waived by them.[19] *Probst v. DiGiovanni*, 95 So.2d 321, 324 (La. 1957); *Cuna v Elton Lumber Co., Ltd.*, 88 So. 493 (La. 1921); *Lotz v. Hessler*, 369 So.2d 265 (La. App. 4th Cir.), *writ denied*, 371 So.2d 1343 (La. 1979). The more formal does not require the signatures of his spouse and children because the Estate determined to its satisfaction that

16. Trial transcript at 1256.

17. *Id.* at 1267.

18. "It is understood that this release will be signed by Mrs. Lee and her children and grandchildren. . . . Or their representatives." Trial transcript at 1273 (counsel for the Estate).

19. "In our discussion, I indicated that it was represented to me that the major children of these people need not sign, had no legal rights. If we discover they do have legal rights, we are going to require them to sign."

"[I]f we determine that they (spouses) have legal . . . rights, we are not going to be signing that release if they don't." Trial transcript at 1265 and 1274. (Counsel for children of Lyda Bunker Hunt.)

these persons have rights derivative only from Hugh, and his signature alone suffices.[20]

Hugh contends that the requirement that his own family sign the more formal document was the cause of his agreement to be bound. But this is not a case of reciprocal agreements; Hugh would derive no benefit from the agreement of his family, nor would they benefit from his agreement. Rather, it was from their refusal to sign that he hoped to benefit, to be released from his agreement. This argument can only be understood from the point of view of a promisor in bad faith. No good faith party to a contract can have as his motive the defeat of the agreement. However, the record is replete with instances of such an attitude on the part of Hugh. Shortly after the settlement conference, Hugh condemned the agreement, stating "if I could get out of it I would get out of it."[21] This Court will not assist Hugh in that effort. *See* La. Civ. Code art. 1901. The January 16 agreement was voluntarily executed with knowledge of its binding effect, and any mistake of law or fact on Hugh's part cannot void it. La. Civ. Code arts. 1825, 1846(2). The question thus becomes whether the document that Hugh has refused to sign is an accurate reflection of the January 16 agreement.

V.

The January 16 agreement clearly contemplated that a more formal document would be drafted embodying the releases described in the agreement. Preparation of this document, the "Master Settlement Agreement", was commenced immediately after the conference by all counsel involved in that agreement. Contrary to the statement of Hugh's counsel in the briefs, it did not take eight months of hard negotiating to confect that document. By the time of the February 25 conference, the document was largely complete. At that point, however, Hugh stated that he needed time to consult his

20. Post Hearing Brief in Support of Petition to Enforce Settlement Agreement, filed on February 7, 1979, at 20.

21. Transcript of December 7, 1978 Hearing, at 94.

counsel. While the parties awaited his response, Mrs. Lee discharged her counsel and was delayed in enrolling new counsel. Finally, Hugh refused to sign and the Deposit Agreement and other papers relating to this motion had to be prepared.

It should be noted that all of the eighteen necessary signatories other than Hugh, many of whom have interests similar to his, have signed the agreement, reflecting their belief that it accurately represents their earlier agreement. The Estate contends that the result should be the same even if the Master Settlement Agreement were materially different, because Hugh cannot be heard to complain of the non-performance of a condition of the earlier agreement, (*i.e.*, that a representative more formal document be drafted) when he caused that non-performance by refusing to negotiate in good faith. The Court need not rely on that defense because it finds that all of the provisions of the Master Settlement Agreement are within the contemplation of the January 16 agreement.[22]

Hugh maintains that the Master Settlement Agreement departs from the January 16 agreement in its treatment of five subjects: confidentiality, the Reliance Trusts, distribution of the settlement proceeds, the scope of the releases, and the choice of law to govern interpretation of the agreement. The arguments will be considered in that order.

The January 16 agreement permanently prohibits public communication by any party to the agreement concerning the lawsuit or the relationship between Mrs. Lee and H. L. Hunt and between their respective families. It also provides that the more formal document shall contain "appropriate indemnity provisions." Hugh complains that the Master Settlement Agreement is too restrictive and objects to its provision for liquidated damages. While certainly more specific, the master

22. "The obligation of contracts extends not only to what is expressly stipulated, but also to everything that by law, equity or custom, is considered as incidental to the particular contract, or necessary to carry it into effect." La. Civ. Code art. 1903.

agreement is no more restrictive than the broad language of the initial agreement. Further, the provision that any profits of the breach of confidentiality shall constitute liquidated damages is the minimal indemnity provision that could reasonably be deemed appropriate. The fact that this and other provisions of the master agreement apply to non-signatory members of Mrs. Lee's family is of no consequence because the agreement holds Mrs. Lee liable for their conduct.[23]

Hugh also objects to the master agreement's provision that the record be sealed by order of Court, on the grounds that it binds persons not parties to the lawsuit. His interpretation of the master agreement is accurate but it represents merely the consent of the parties to the Order previously entered by the Court on January 23, 1978. The restrictions imposed upon Mrs. Lee's disposition of certain items of jewelry and personal letters that had been introduced as evidence at the trial are necessary incidents of their release from the custody of the Clerk, an act to which Hugh does not object.

The next subject of dispute is the master agreement's failure to address the desire of Mrs. Lee and Hugh to obtain a new trustee or advisory board for the Reliance Trusts. These trusts were formed by Mrs. Lee in 1941 for the benefit of her four children. In the January 16 agreement the Estate agreed to see what it could do about installing officers more to the liking of Hugh and Mrs. Lee. Upon reviewing the act establishing the trusts, the Estate concluded, and the Court agrees, that no one can effect the removal of the officers except the officers themselves, without terminating the trust.[24] Accordingly, reference to the substitution of trust officers was appropriately omitted from the master agreement.

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23. *See* Master Settlement Agreement at 12, Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing.

24. *See* the Act of Donation of April 12, 1941, filed in the record on December 28, 1978.

At the close of the settlement conference the question of distribution of settlement funds was raised. The concern was that improved tax treatment could be obtained if any money destined for other members of Mrs. Lee's family went directly to them rather than passing through Mrs. Lee first. Mrs. Lee stated that at least half of the money would go to trust funds being established for her grandchildren. The Master Settlement Agreement provides that the entire amount shall be paid jointly to Mrs. Lee, her lawyers, her two living children, and the major children of her two deceased children.[25] The change is not a material one since Mrs. Lee and the other recipients of the funds have approved the manner of payment. Hugh has no proper interest in the matter.

The most significant subject of dispute is the scope of the releases. Hugh objects to the release of future claims against members of the other families which are not related to the subject matter of the lawsuit. And well he might object but for the fact that no such release is required by the master agreement. That agreement, like the January 16 agreement, requires a release of all claims, present and future, arising out of the subject matter of the lawsuit – the relationship between Mrs. Lee and H. L. Hunt. However, only *existing* claims between members of the different families are released if they are not related to the lawsuit.

The January 16 agreement provides that members of each family shall release all inheritance rights in the estates of members of the other families. Hugh claims that the January 16 agreement was intended to release only rights of intestate succession while the master agreement would cover testamentary rights, as well. All parties knew that the settlement agreement was to end all rights arising from the relationship between Mrs. Lee and H. L Hunt. Obviously, this would include rights as heirs at law in the intestate succession of any member of the other families. Less obviously, it would include any right under a testamentary bequest referring to "brothers and

25. *See* Joint Exhibit 8 filed in the record of the December 7, 1978 Hearing.

sisters." It may be difficult to understand why so much energy would be expended regarding release of a right which could be changed at any time by the testator. Part of the debate is, no doubt, attributable to the difficulty of reviewing and amending the myriad wills and trust documents. However, all parties were also aware that the claim could be made that a certain member of one of the families no longer possessed testamentary capacity. Thus it was clearly understood that existing testamentary rights would also have to be released, allowing them to be specifically re-established after the date of the settlement if the testator wished to include members of the other families. The Master Settlement Agreement is reasonably designed to fulfill that intent.

Hugh also objects to one of the final provisions of the master agreement: "The conditions, terms, provisions and covenants contained in this agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and their respective heirs, successors, assigns, and legal representatives."[26] This provision adds nothing to what the law governing contracts already provides. *See, e.g.*, La. Civ. Code arts. 1997, 1999.

The final subject of dispute consists of Hugh's related objections to the choice of Texas law to govern the agreement, and to the waiver of future inheritance rights. Hugh properly asserts that Louisiana law looks with disfavor upon attempts to waive future inheritance rights. However, as none of the parties reside in Louisiana, that substantive policy is of no consequence. Article 10 of the Civil Code requires application of the law of the place where the contract is to have effect, which, in the case of the persons being released by Hugh, is Texas. Hugh does not claim that the waiver is void under the law of Texas.

For the same reason, it is clear that the parties intended Texas law to govern the agreement. Under accepted canons of

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26. Master Settlement Agreement, at 15, Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing.

construction, the parties must be deemed to have intended to create an enforceable contract. A court should not lightly read an agreement in such a way as to frustrate this intent. To require application of Louisiana law would defeat the aim of the parties, most of whom reside in Louisiana. Accordingly, the Court finds that the Master Settlement Agreement properly reflects the intent of the parties to the January 16 agreement.

CONCLUSION

Having found that Hugh S. Hunt is properly before this Court, that he executed a binding contract on January 16, 1978, and that this contract obligates him to execute the Master Settlement Agreement and accompanying documents, the Court does hereby order him to do so. Although at the December 7, 1978 hearing he agreed to waive the opportunity to comply with this Order, the Court will extend him a brief opportunity once more.

If Hugh has not executed the documents by 5:00 O'Clock P.M. on Thursday, December 27, 1979, the Court will direct the Clerk to execute them in his place by a judgment to be submitted by counsel for the Estate on Friday, December 28, 1979.

THUS DONE AND SIGNED in chambers at Shreveport, Louisiana, this 19th day of December, 1979.

/s/ Tom Stagg

TOM STAGG
UNITED STATES DISTRICT JUDGE

APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

TOM STAGG
DISTRICT JUDGE
UNITED STATES COURT HOUSE
SHREVEPORT, LOUISIANA 71161
P.O. Box "C"
ph. 318/226-5260

March 24, 1978

Mrs. Frania Tye Lee
68 Peachtree Circle, N.E.
Atlanta, GA 30309

RE: Transcript of settlement
conference of January 16, 1978

Dear Mrs. Lee:

My law clerk, Tom Arceneaux, discussed with me your request for a copy of the transcript of the settlement conference held on the last day of the trial. Enclosed is the copy you requested.

I hope that matters are progressing well with respect to the final settlement papers, and that this matter can be completed soon. Further delay would not be to anyone's advantage.

Yours very truly,

/s/ Tom Stagg
Tom Stagg

TS/dc

CERTIFIED MAIL –
RETURN RECEIPT REQUESTED
Civil Action No. 76-0628

. . . Let's go on.

MR. COOK: Item two. That Mrs. Lee and all of her descendants would sign a release releasing all parties from any claim, including future inheritance rights in the Estate of any members of the Hunt family, which release will contain appropriate indemnity provisions.

MR. FRITCHIE: You are now talking – excuse me – I have to ask you at this point when you say "All rights of future inheritance" he means by operation of law?

THE COURT: By operation of law.

MR. COOK: That is right.

MR. FRITCHIE: When you say, "Mrs. Lee and all of her decedents," you are talking about Mrs. Lee and those of her decedents who are of the age of majority?

MR. COOK: And their respective spouses, and I think at this time it might be well to list all of the parties to be included.

MR. HUNTER: Let me say when you say "respective spouses," again I have not conferred –

THE COURT: (Interposing) What rights do spouses have in the succession of somebody anyway, Sidney? I don't know. You can instruct me because I would –

MR. COOK: (Interposing) Well, let us list all of the parties that we are talking about who will sign.

MR. HIRSCHKOP: I don't know if there is dower right that is in here.

MP. FRITCHIE: That would be Haroldina?

MR. HUNTER: Haroldina.

MR. HUGH LEE HUNT: I don't know if I can legally sign away any of my children's rights. You folks are attorneys, you know better than I that –

MR. HUNTER: (Interposing) It was my understanding, gentlemen, that we are talking about four branches of Mrs. Lee's family.

One branch would be Mr. Lee, the second branch would be Howard's family which would be now, as I appreciate his wife, Eloise, and his son, Mark.

The third branch would be Haroldina signing, although I have no authority relative to her husband. And I don't know, I did not and cannot, you know, I am asking something. I don't represent that gentleman.

I have spoken to Mrs. Haroldina French, and she has authorized me to say she would execute the document as far as she is concerned and then we would have Ronnie through his guardian and, Ronnie, are you now of age yourself, Ronnie?

MR. RONNIE CARCARILDGE: Yes, I am.

MR. HUNTER: We would have Ronnie and Frania in the capacity of guardian for him.

Now, those were the ones whom we would contemplate, as I say, I do not represent Eloise but I understand that she would, from someone, the information that has been made available to me that she would sign such a document.

MR. FRITCHIE: I think Mr. Ray Lee Hunt has indicated that.

MR. HUNTER: He is the one that told me that.

MR. HIRSCHKOP: In our discussion, I indicated that it was represented to me that the majority children of these people need not sign, had no legal rights. If we discover they do have legal rights, we are going to require them to sign.

MR. HUNTER: Well, who are you speaking of that are majority?

MR. HIRSCHKOP: Do you have children of age, over age?

MR. HUGH LEE HUNT: Yes.

MR. HIRSCHKOP: Will they sign?

MR. HUGH LEE HUNT: I don't know, I can't speak.

MR. HIRSCHKOP: If we determine –

MR. FRITCHIE: (Interposing) You would recommend that they sign?

MR. HUGH LEE HUNT: You see, we never talked inheritance rights, God forbid that something should happen that the entire first family should be wiped out, let's say something like that did happen.

MR. HIRSCHKOP: Give you all inheritance rights?

MR. HUGH LEE HUNT: We would have inheritance rights I understand by Texas law.

MR. COOK: This is what is being settled at this time, this is being released.

MR. HUGH LEE HUNT: We never agreed to this, there was no discussion on this.

MR. HUNTER: Yes, there was.

MR. HUGH LEE HUNT: There was discussion on the fact that we would not do anything on public statements and everything else like that.

MR. FRITCHIE: That you would give up inheritance rights.

MR. HUGH LEE HUNT: Anything having to do with this suit, with the issue of this suit we would not be involved in, but if you remember there was some discussion about –

MR. HUNTER: (Interposing) What inheritance rights is anybody conceivably talking about other than possibly collateral heirs inheriting from someone else if they did not leave a will or something?

THE COURT: That's the question and that is the only thing that is being discussed and it was discussed here in chambers that the settlement was as to this lawsuit and as to any possible inheritance rights should they occur, and I understand that to be the basis of the settlement also.

MR. HUNTER: I understood that, too, Judge, there is no question.

THE COURT: In other words, all of the parties who have discussed this matter up to this point have understood that this was a final settlement.

MR. HUGH LEE HUNT: Your Honor, I want to make a statement. I am here because my mother is taking four pills a day for her heart. I have been advised by my attorneys that if she dies, her rights die and I will sign whatever papers you want, and I would like to leave the chambers, please.

THE COURT: You may, sir.

(Thereupon, Mr. Hugh Lee Hunt left the chambers.)

MR. HERBERT HUNT: Just out of curiosity, where does that leave it?

THE COURT: Hold it, Mr. Reporter.

(Thereupon, an off-the-record discussion was had.)

THE COURT: Let's continue, Mr. Reporter.

Sidney, you have another paragraph to dictate?

MR. COOK: I have several here.

THE COURT: Well, let's get after it.

MR. RAY HUNT: I would like to be clear that I am here in a dual capacity, one as executor of the estate and, secondly, representing my sisters, my mother and myself and . . . .

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FILED
JUL 20 1981
STEVAS,
CLERK

No. 80-2126

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HUGH S. HUNT, *Petitioner,*

v.

RAY LEE HUNT, EXECUTOR OF THE ESTATE OF H. L. HUNT, *Respondent.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

This action arises from the resistance of petitioner, Hugh S. Hunt, to proceedings brought by Ray Lee Hunt, Executor of the Estate of H.L. Hunt, to enforce a compromise and settlement agreement entered into in the context of pending federal litigation. Enforcement of the settlement was ordered by the District Court after a plenary hearing; the order was affirmed by the U. S. Court of Appeals for the Fifth Circuit. The petition for writ of certiorari presents the following questions:

1. Whether this Court has jurisdiction to issue a writ of certiorari in this case when the *pro se* petition was filed 154 days after entry of judgment by the U. S. Court of Appeals for the Fifth Circuit despite the time limitation imposed by 28 U.S.C. §2101(c), requiring that an application for writ of certiorari be filed no later than 150 days (including all extensions) after entry of the judgment of which review is sought?

2. In the alternative, should the Court find jurisdiction, whether the Court of Appeals, in determining the applicable state law by which to assess certain of Hugh S. Hunt's objections to the settlement, acted properly in applying the choice of law rules of the District Court's forum state?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-2126

HUGH S. HUNT, *Petitioner,*

v.

RAY LEE HUNT, EXECUTOR OF THE ESTATE OF H. L. HUNT, *Respondent.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Ray Lee Hunt, Executor of the Estate of H. L. Hunt, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 631 F.2d 1171. (App. C, *infra*)

JURISDICTION

Petitioner fails to state the statutory provision conferring jurisdiction on the Supreme Court of the United States to review the judgment in question by writ of certiorari as required by Supreme Court Rule 21.1(e)(iv). In an action such as this jurisdiction ordinarily would be conferred by 28 U.S.C. §2101(c); however, for the reasons more fully discussed under the heading "Reasons For Denying the Writ," below, respondent contends that the petition for writ of certiorari is jurisdictionally out of time.

STATUTES INVOLVED

28 U.S.C. §2101(c) provides:

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

La. Civ. Code art 10 provides in pertinent part:

"The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed."

"But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect." (Third paragraph omitted)

STATEMENT OF THE CASE

Many of the allegations made by Hugh S. Hunt ("Hugh") in his petition are untrue or materially misleading. Hugh has represented to the Court as factual certain matters which are totally unsupported by the record and, in some instances, intentionally ignored the factual findings of the lower courts.[1] Clearly it is not the function of the Court on petition

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[1] Hugh begins his Statement of the Case by recounting Mrs. Lee's allegations concerning her claim of putative marriage to the late H. L. Hunt. With no support in the record, Hugh has stated this claim, representing nothing more than a mere contention, as though it were factual. Throughout the litigation the Estate strenuously has disputed the contention that Mrs. Lee and the late Mr. Hunt were ever wed. As a practical matter, the January 16 settlement foreclosed any factual determination respecting Mrs. Lee's claim of putative marriage.

Hugh's assertion in his petition (P. 3) that the compromise about which this action is concerned was prompted by the ex parte ad-

for writ of certiorari to review the accuracy of factual findings entered below; accordingly, respondent will not counter Hugh's assertions point by point. However, for the sake of clarity and coherence, the following narration of relevant facts is offered:

On November 11, 1975, Mrs. Frania Tye Lee ("Mrs. Lee") filed her complaint (the "Lee Suit") in the United States District Court for the Middle District of Louisiana against Ray Lee Hunt, Executor of the Estate of H. L. Hunt (the "Estate"), seeking to be recognized as the putative spouse of the late H. L. Hunt and, as such, entitled to an undivided one-half interest in all property acquired during the alleged putative relationship.

The Lee Suit was transferred to the Western District of Louisiana, Shreveport Division.[2] The matter was tried to a

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vice of the District Judge is completely without basis in the record. Moreover, the District Judge's letter to Mrs. Lee (attached as Appendix E to Hugh's petition) was never introduced by Hugh, does not form part of the record, and its existence was heretofore unknown to the Estate.

[2] The basis for the transfer of the action from the Middle District of Louisiana was that Court's ruling that Mrs. Lee was not a "resident" of the Middle District of Louisiana so as to establish venue under 28 U.S.C. §1391(a). Mrs. Lee, having been a resident of Atlanta, Georgia, continuously for thirty years, had moved to Baton Rouge, Louisiana, (seat of the Middle District) only eight days prior to the commencement of her action. Admittedly the sole purpose of Mrs. Lee's move to Baton Rouge was to establish the Middle District of Louisiana as a district of proper venue, as she did not wish to sue the Estate in Dallas, the home of the late Mr. Hunt. The District Court properly concluded that Mrs. Lee was not a "resident" of Louisiana for purposes of venue. After commencement of the lawsuit Mrs. Lee returned to Atlanta, where she has lived since. The Master Settlement Agreement (which is of record), which was signed by Mrs. Lee in Atlanta September 15, 1978, expressly states that Mrs. Lee is a resident of that city. Hugh's assertion in his petition that Mrs. Lee is a "resident" of Louisiana is

jury for six days, ending January 16, 1978. On that date, prior to the conclusion of trial, Mrs. Lee, the Estate, and others interested in the Lee Suit (including Hugh) reached a compromise and settlement (the "January 16 Settlement"). The agreement was dictated in detail to the Court reporter in the presence of the Court. During a brief recess the dictated settlement was transcribed, following which it was executed by the parties in the presence of the Court.[3] On the basis of the January 16 Settlement the District Court discharged the jury and, on January 23, 1978, entered a judgment of dismissal of the Lee Suit, with prejudice.

In the course of dictation of the January 16 Settlement the signatories, including Hugh, stipulated that each, for the members of their respective families was authorized "to speak on behalf of the other members" of their respective families, and that the purpose of the settlement was "to bring this entire litigation to a conclusion and in addition to this litigation

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simply a deliberate misstatement of fact. *See: Lee* v. *Hunt*, 410 F. Supp. 329 (M.D. La. 1976).

On rehearing, the District Court for the Middle District permitted the action to be transferred to the Shreveport Division of the Western District of Louisiana on the basis of Mrs. Lee's claim that the putative matrimonial domicile was in Shreveport from 1926-1930; on the basis of such contention the Court held that Shreveport could be where the claim arose. 28 U.S.C. §1391(a). *See*: *Lee* v. *Hunt*, 415 F. Supp. 245 (M.D.La. 1976).

[3] Hugh has attached only a small part of the January 16 Settlement in the Appendix to his petition. The entire transcript is included in the record. Hugh attempted in the lower courts to make much of the fact that he absented himself from a portion of the dictation of the January 16 Settlement; however, as stated by the District Court in its Memoranum Ruling (App. E, *infra*), Hugh was given a complete copy of the January 16 Settlement for his consideration, and he was afforded the opportunity to and did read and sign the document in the presence of the Court, acknowledging to the Court that he understood its terms before signing. (App. E, p.31a)

any other claims of any nature or kind which any member of the Hunt family may have one against the other of any nature or kind . . ." It was agreed in the January 16 Settlement:

> "That Mrs. Lee and all her descendants would sign a release releasing all parties from any claim, including future inheritance rights in the estate of any members of the Hunt family, which release will contain appropriate indemnity provisions, and the other Hunt families will give a similar release to the Estate of Mrs. Lee or her descendants . . ."

In return for this complete and final settlement the Estate and other Hunt family members agreed to pay the sum of $7,500,000.00. The allocation of consideration among Mrs. Lee and her descendants was, by agreement of the parties, left to the discretion of Mrs. Lee.

Immediately following the settlement, attorneys for the parties (which included all attorneys present during the January 16 Settlement) began preparation of documents necessary to implement all relevant terms and provisions agreed upon in the January 16 Settlement. The form of documentation chosen was an omnibus agreement styled "Master Settlement Agreement" and seventeen "Assignment of Expectancy Agreements", designed to encompass a memorial of all terms and provisions of the January 16 Settlement and to effect the releases and waivers which it required.

The events which transpired following the January 16 Settlement are unimportant here. Suffice it to say that by September 15, 1978, the Master Settlement Agreement and Assignment of Expectancy Agreements had been executed by all required signatories, save Hugh.[4] Although tendered a copy of the settlement documents for execution, Hugh declined to sign.

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[4] The parties to the Master Settlement Agreement were for convenience identified in three groups: Group 1, consisting of Mrs. Lee and her descendants: Mark Steven Lee of Houston, Texas, Haroldina Hunt Lee Franch and Ronald A. Cartledge of Atlanta,

On September 26, 1978, the Estate filed its Petition to Enforce Settlement Agreement, praying, among other things, (1) that Hugh be joined as a named defendant, (2) that Hugh be directed to appear before the Court to show cause why the settlement should not be enforced, and (3) for entry of judgment (a) declaring all parties to the January 16 Settlement bound by the terms and conditions of the Master Settlement Agreement and Assignment of Expectancy Agreements, and (b) specifically enforcing the settlement against Hugh by requiring his compliance with its terms and the terms of the Master Settlement Agreement. By orders executed the same day the District Court joined Hugh as a named defendant pursuant to Fed. R. Civ. P. 19(a) and directed him to appear at a plenary hearing December 7, 1978, to show cause why the settlement should not be enforced against him by the District Court.

In response to the Estate's peititon, Hugh filed two motions. The first, styled "Motion to Vacate or Modify Judgment Under Rule 60(b), F.R.C.P." requested that the Court vacate or modify its prior judgment of dismissal in the Lee Suit so as to exclude Hugh from the January 16 Settlement. Hugh's second motion, styled "Motion to Dismiss For Lack of Jurisdiction Over Subject Matter and Over Person of The Defendant And For Lack of Venue Under Rule 12(b) F.R.C.P.," requested that the District Court dismiss the

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Georgia, and Hugh, of Potomac, Maryland; Group 2, consisting of the children born to Mr. Hunt and his first wife, the late Lyda Bunker Hunt: Margaret Hunt Hill, Haroldson L. Hunt, Jr., Caroline Hunt Schoellkopf, Nelson Bunker Hunt, William Herbert Hunt, and Lamar Hunt, all of Dallas, Texas; and Group 3, consisting of Mr. Hunt's widow, Mrs. H. L. (Ruth Ray) Hunt; and their children: Ray Lee Hunt, Ruth June Hunt and Helen Hunt Kreiling, all of Dallas, Texas, and Swanee Hunt Meeks, of Denver, Colorado. The Estate appeared in the Master Settlement Agreement through Ray Lee Hunt, independent executor pursuant to the Last Will and Testament of H. L. Hunt and Codicil duly probated in Dallas County, Texas, December 16, 1974 in Cause No. 74-3363-CP.

Estate's petition pursuant to Fed. R. Civ. P. 12(b) (1), (2), (5) and (6). By express stipulation of Hugh's counsel at the plenary hearing December 7, 1978 (Hugh was represented at the time), Hugh's Rule 60(b) motion, based upon the alleged invalidity of the January 16 Settlement, was withdrawn and abandoned.[1] Hugh's jurisdictional motion was referred to the merits.

On December 19, 1979, the District Court entered its Memorandum Ruling (App. E, *infra*) holding the January 16 Settlement to be a valid agreement, lawfully entered into and binding upon all parties. The Court further held the Master Settlement Agreement and Assignment of Expectancy Agreements to contain a full and fair reflection of the terms and provisions of the January 16 Settlement. In accordance with its Memorandum Ruling the District Court on December 27, 1979 entered a Final Judgment (App. D, *infra*) ordering Hugh's execution of the settlement documents, or in the event of Hugh's failure to comply, their execution by the Clerk of Court to have like effect as if performed by Hugh pursuant to Fed. R. Civ. P. 70.

On December 28, 1979, Hugh moved for a new trial. The District Court denied Hugh's motion January 15, 1980, and on January 31, 1980, Hugh noticed an appeal.

Following completion of its screening procedures, the U.S. Court of Appeals for the Fifth Circuit placed the case on its summary calendar. The Court of Appeals affirmed the District Court December 1, 1980 (App. C, *infra*), holding:

> "We conclude that the January 16 Settlement Agreement embodied in the transcript of the conference held that

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[1] For reasons not clear Hugh erroneously asserts in his petition (p. 5) that his 60(b) motion, although specifically excluded from the scope of the hearing, was not withdrawn or abandoned. This assertion is clearly contrary to both the record and the opinion of the Court of Appeals, which, having had the benefit of a complete transcript of the hearing, observed in its opinion that Hugh's 60(b) motion had been withdrawn. (App. C, p 6a).

day in the Judge's chambers is an enforceable contract of settlement under Texas law and is binding on Hugh Hunt. We also conclude that the Master Settlement Agreement reasonably represents the intent of the January 16 agreement, and that Hugh Hunt may be bound by its terms. The judgment of the District Court is affirmed in all respects." (App. C, p.24a).[4]

On the last day of the period within which to petition the Court of Appeals for rehearing Hugh applied for an extension of time within which to do so. Hugh was granted an extension of time until and including December 29, 1980, within which to petition the Court of Appeals for rehearing, and he did so on that date. By order entered January 13, 1981 (App. B, *infra*) the Court of Appeals denied Hugh's petition for rehearing.

According to the provisions of 28 U.S.C. §2101(c), the ninety day period within which Hugh might properly petition this Court for a writ of certiorari would have expired April 13, 1981. However, by order entered April 9, 1981, Justice Powell afforded Hugh an extension until and including April 30, 1981, within which to file such a petition. (App. A, *infra*). On the final day of his extension Hugh presented his petition in typewritten form to the Clerk of Court. As Hugh had not sought and obtained leave to proceed *in forma pauperis*, the Clerk, acting pursuant to Rule 33.7 of the Rules of this Court, properly declined to accept Hugh's petition for filing. The Clerk returned the petition to Hugh, advised him of the requirement that the petition be printed in compliance with Rule 33, and instructed Hugh that properly printed copies

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[4] Despite the fact that both the District Court and Court of Appeals squarely held that the Master Settlement Agreement represents a full and fair reflection of the intent of the parties to the January 16 Settlement (a factual finding) Hugh continues in this Court to press his litany of complaints respecting alleged significant differences in the agreements. For a response to Hugh's factual arguments in this regard, the Estate respectfully refers the Court to the opinions of the District Court and Court of Appeals.

must be filed.[7] As appears from Hugh's certificate of service (App. F, *infra*), it was not until June 16, 1981, one and one-half months later, that Hugh filed his petition for writ of certiorari in printed form in compliance with the instructions given him by the Clerk.

REASONS FOR DENYING THE WRIT

1. The Court Is Without Jurisdiction To Entertain Hugh's Petition For Writ Of Certiorari.

Hugh's petition for writ of certiorari is jurisdictionally out of time. 28 U.S.C. §2101(c), the controlling statute, provides in pertinent part:

> "Any . . . writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not to exceed sixty days."

Where, as in this case, there has been a petition for rehearing in the Court of Appeals, the ninety day period begins to run from the date of denial or other disposition of petition for rehearing. Rule 20.4, Rules of the Supreme Court. Accordingly, the period afforded Hugh under the quoted statute began January 13, 1981, the date of the Court of Appeals' denial of Hugh's petition for rehearing.

It is clear from the literal language of 28 U.S.C. §2101(c) that the maximum time which may be afforded any litigant in a civil action to petition the Supreme Court of the United States for a writ of certiorari is 150 days. As shown by the record (App. F, *infra*), Hugh's petition, although backdated to April 30, 1981, was not filed in compliance with Rule 33

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[7] This information was obtained by telephone discussions between counsel for the Estate and various personnel in office of the Clerk of the Supreme Court.

until June 16, 1981, 154 days following the beginning of the period triggered by the Court of Appeals' denial of Hugh's petition for rehearing.

The delays fixed for seeking review in the Supreme Court of the United States fall generally into two categories: (1) those established by the Rules of the Supreme Court pursuant to authority conferred upon the Court by statute; e.g. Rule 20.1, promulgated pursuant to 18 U.S.C. §3772 and 28 U.S.C. §2101(d); and (2) those specifically fixed by congressional act; e.g. 28 U.S.C. §2101(a), (b) and (c). Although delays of the former sort have been held to be subject to relaxation by the Court in the exercise of its discretion; *Schacht* v. *U.S.*, 398 U.S. 58 (1970); *Taglianetti* v. *U. S.*, 394 U.S. 316, n.1 (1969); the statutory delays uniformly have been treated as jurisdictional. *Schacht* v. *U.S.*, 398 U.S. 58 (1970); *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399 (1923). The rationale for the distinction was articulated by Justice Harlan in his concurring opinion in *Schacht* v. *U.S.*, 398 U.S. 58 (1970):

> ". . . I [do not] find it at all anomalous that this Court on occasion waives the time limitations imposed by its own Rules yet treats the time requirements imposed by statute as jurisdictional. As a matter of statutory interpretation, the Court has not presumed the right to extend time limits specified in statutes where there is no indication of a congressional purpose to authorize the Court to do so. Because we cannot 'waive' congressional enactments, the statutory time limits are treated as jurisdictional." 398 U.S. at 68.

In *Matton Steamboat Co.* v. *Murphy*, 319 U.S. 412 (1943), the Court, holding the thirty day delay for appeal in civil cases provided by 28 U.S.C. §2107 mandatory and jurisdictional, stated as the purpose of the rule the need "to set a definite point of time when litigation shall be at an end, unless within that time the prescribed application has been made; and if it has not, to advise prospective appellees that they are freed of the appellant's demands. Any other con-

struction of the statute would defeat its purpose." *Matton Steamboat* v. *Murphy*, 319 U.S. 412, at 415 (1943).

The Estate suggests that the rationale stated by the Court in *Matton* as underpinning the jurisdictional nature of the delay for appeal provided by 28 U.S.C §2107 applies with equal force to the statutory delay for application for writ of certiorari provided by 28 U.S.C. §2101(c). There should come a time when a litigant successful in the Court of Appeals can be secure in knowing that a favorable judgment or other order is final and no longer subject to review on writ of certiorari. By treating the delays provided by 28 U.S.C. §2101(c) as jurisdictional, this purpose is achieved precisely.

The Estate recognizes that Hugh's belated petition was tendered to the Clerk pursuant to Rule 33.7 of this Court, which provides in pertinent part:

> "The Clerk shall not accept for filing any document presented in a form not in compliance with this Rule, but shall return it indicating to the defaulting party wherein he has failed to comply; the filing, however, shall not thereby be deemed untimely provided that new and proper copies are promptly substituted. If the Court shall find that the provisions of this Rule have not been adhered to, it may impose, in its discretion, appropriate sanctions including but not limited to dismissal of the action, imposition of costs, or disciplinary sanction upon counsel."

So long as any substitution of "new and proper copies" of a petition for certiorari which may be required by the Clerk under the Rule occurs within the delays prescribed by 28 U.S.C. §2101(c), the Rule and the statute remain compatible. However, where, as here, a petitioner for certiorari fails to substitute new and proper copies of his petition as required by the Clerk during the jurisdictional period, the statute and the Rule fall into apparent conflict. In such instance, the

Estate submits, the Rule must give way to the statutory jurisdictional time limitations.[8]

Clearly here such an interpretation would work no undeserved result. Even though Hugh waited until the last day of his extension to present his typewritten petition for certiorari, there remained at that time forty-three days of the jurisdictional period within which Hugh might substitute new and proper copies of his petition in accordance with Rule 33. Hugh simply failed to do so, and, having failed to do so, his petition should be dismissed or denied.

A second, and equally viable, reason for dismissing or denying Hugh's petition is his noncompliance with the requirement of Rule 33.7 that new and proper copies be *promptly substituted*. In waiting nearly seven weeks to substitute properly printed copies of his petition for certiorari, Hugh can hardly be said to have been "prompt."[9] In light of Hugh's obvious delay in carrying out the instructions of the Clerk, the Estate respectfully submits that the sanction of dismissal stipulated in Rule 33.7 should be imposed.

2. The Court of Appeals Fully Considered And Correctly Decided All Issues Presented For Review By Petitioner.

Hugh has articulated no valid reason for granting his writ in accordance with the provisions of Rule 17 of this Court. He simply complains because the Court of Appeals, in the ex-

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[8] A different result might follow if timely petitions in improper for were filed and docketed, with proper copies later substituted. Under the Rules promulgated by the Court, however, the Clerk is directed expressly not to accept petitions in improper form. Of course, the anomaly here presented should not often occur, for a petitioner submitting an improper petition on the ninetieth day should have sixty jurisdictional days remaining under the Rule within which to substitute new and proper copies of his petition.

[9] Had Hugh been diligent in having his petition printed in proper form when so instructed by the Clerk, new and proper copies could have been substituted in a matter of days.

ercise of its *Erie/Klaxon*[10] responsibility to determine the applicable substantive law by which to judge certain of Hugh's objections concerning the validity of the January 16 Settlement, employed the interest analysis principles of the Restatement, Second, Conflicts of Laws (1969). Although Hugh charges the Court of Appeals with error in (i) injecting interest analysis principles in Louisiana's law, where he claims they do not otherwise exist; and (ii) allegedly ignoring a statutory directive of the forum state respecting choice of law, an examination of Louisiana law reveals that Hugh's arguments clearly miss the mark.

(a) Louisiana Explicitly Has Adopted The Choice Of Law Rules Of The Restatement, Second, Conflicts Of Laws (1969).

Louisiana by a decision of its Supreme Court has joined the ranks of states which employ the modern choice of law rules embodied in the Restatement, Second, Conflicts of Laws (1969); therefore, according to the teaching of *Klaxon Co.* v. *Stentor Electric Manufacturing Co.*, 313 U.S. 487 (1941), the Fifth Circuit's selection of applicable substantive state law in this case by reference to those principles was eminently correct.

For some years prior to 1970, there began to appear in the decisions of Louisiana's intermediate courts of appeal the suggestion that Louisiana ought to follow a more modern approach to the resolution of conflicts of laws issues, one based on interest analysis.[11] That notion initially was rejected by the

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[10] *Erie R. R. Co.* v. *Tompkins*, 304 U.S. 64 (1938); *Klaxon Co.* v. *Stentor Electric Manufacturing Co.*, 313 U.S. 487 (1941).

[11] *See:* e.g.: *Universal C.I.T. Credit Corp.* v. *Hulett*, 151 So. 2d 705 (La. App. 3rd Cir. 1963); *Blanchard* v. *Blanchard*, 180 So. 2d 564 (La. App. 3rd Cir. 1965) (concurring opinion of Judge Tate). The Authority cited for the proposition that Louisiana should adopt the principles of interest analysis was La. Civ. Code art. 10.

Supreme Court of Louisiana in *Johnson* v. *St. Paul Morcury Insurance Co.*, 236 So. 2d 216 (La. 1970), where the Court required strict adherence to the rule of *lex loci delicti* (place of injury) or "vested rights," as dictating the choice of law in actions in tort.[12]

Three years later, however, in *Jagers* v. *Royal Indemnity Co.*, 276 So. 2d 309 (La. 1973), the Supreme Court of Louisiana expressly reversed its opinion in *Johnson* and abandoned the traditional rule of *lex loci deliciti* in favor of the more modern notions of interest analysis. In *Jagers,* the plaintiff and her minor son, citizens of Lousiana, had an automobile accident while traveling in Mississippi. The son was driving. Mrs. Jagers sued her son's automobile liability insurer in Louisiana for recovery of personal injuries sustained in the accident. The insurer defended on the grounds that Mrs. Jager's action against her son was barred under Mississippi law. The Supreme Court of Louisiana rejected the insurer's contention that the law of Mississippi necessarily must apply, finding instead a "false" conflict of laws question. Such posture "occurs when it is found that only a single state has an interest in the application of its law, and that the other state has no interest in the application of its law in the case." 276 So. 2d at 311. Finding under interest analysis that Mississippi, the place of the injury, had virtually no interest in the application of its law, the Supreme Court of Louisiana directed that Louisiana substantive law should supply the rule

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[12] As more fully appears from the discussion, *infra*, even prior to Louisiana's adoption of the Restatement the courts of Louisiana did not subscribe in all instances to the companion rule of *lex loci contractus.* Instead, in accordance with La. Civ. Code Art. 10, the general rule was said to be that the rights and obligations of the parties to a contract were determined by the law of the place where the agreement was to have effect. *See: DeMary* v. *Fontenot*, 161 So. 2d 82 (La. App. 3rd Cir. 1964), and cases there cited.

of decision. Casting aside the old rule, the Supreme Court of Louisiana stated:

> "That some modern methods for determining whether to apply the law of the forum are faulty in some respects should not deter a court in the application of the law of the forum to its citizens, when not otherwise prohibited." 276 So. 2d at 312.

As a footnote to the quoted statement, the Supreme Court of Louisiana directed: "For choice of law principles, see Restatement, Second, Conflict of Laws, §6 (1969) . . ." 276 So. 2d at 312.[13]

The first occasion for an *Erie/Klaxon* analysis of *Jagers* by the Fifth Circuit came in *Brinkley & West, Inc.* v. *Foremost Insurance Co.*, 499 F.2d 928 (5th Cir. 1974). After first noting in *Brinkley & West, Inc.* that *Jagers* involved a "false" conflicts issue, the Fifth Circuit went on to conclude on the basis of the Supreme Court of Louisiana's express reference to the principles of the Restatement, Second, Conflicts of Laws (1969) that Louisiana courts in cases of true conflicts would determine applicable state law by reference to those principles to discern from among the interested states that with the most significant relationship to a particular case

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[13] Restatement, Second, Conflict of Laws, §6 (1969), quoted by the Supreme Court of Louisiana, provides: "(1) A Court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law, (2) When there is not such directive, the factors relevant to the choice of the applicable rule of law include:

"(a) the needs of the interstate and international systems,
"(b) the relevant policies of the forum,
"(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
"(d) the protection of justified expectations,
"(e) the basic policies underlying the particular field of law,
"(f) certainity, predictability and uniformity of result, and
"(g) ease in the determination and application of the law to be applied."

or occurrence.[14] Post - *Jagers* Louisiana jurisprudence has shown that the Fifth Circuit in *Brinkley & West, Inc.* could not have been more correct.

In *Sutton* v. *Langley,* 320 So. 2d 321 (La. App. 2d Cir. 1976), writ den. 333 So. 2d 242 (1976), a case upon which Hugh relies, the Louisiana Second Circuit Court of Appeal expressly interpreted the *Jagers* decision "to direct that the 'interest analysis' theory for resolving choice of law problems in Louisiana is now the proper approach." 330 So. 2d at 326. The Court went on to interpret *Jagers* ". . . as authority for abandoning rigid application of the *lex loci contractus* rule . . ." and applied modern principles of interest analysis to resolve the choice of law issues there presented. 330 So. 2d at 328.

In *Wayne* v. *Olinkraft, Inc.*, 293 So. 2d 896 (La. App. 2d Cir. 1974) writ den. 294 So. 2d 827 (1974), the Court observed that "[t]hroughout the opinion in *Jagers* and its progeny we find an effort to bring clarity to our law in a realistic way and in so doing Restatement, Second, Conflict of Laws, is cited several times.". 293 So. 2d at 898. The Court in *Wayne* went on to quote extensively from and to apply the conflicts principles of the Restatement.[15]

As can readily be seen from the jurisprudence, interest analysis was not, as Hugh charges, "imposed" upon Louisiana law by the federal judiciary.[16] To the contrary, the

[14] Hugh disputes the Fifth Circuit's holding because the Court in *Jagers* adopted the Restatement principles by footnote. As this Court observed in *Schacht* v. *U.S.*, 398 U.S. 58 (1970), this certainly "is no reason to disregard [the] holding . . ." 398 U.S. at 64.

[15] *See also: Wickham* v. *Prudential Ins. Co. of America*, 366 So. 2d 951 (La. App. 1st Cir. 1978); *Davis* v. *Humble Oil & Refining Co.*, 283 So. 2d 783 (La. App. 1st Cir. 1973). Contrary to Hugh's argument that Louisiana has employed interest analysis only to extend the application of its law, in *Wayne* and *Davis* interest analysis was utilized to apply foreign law in a Louisiana forum.

[16] Hugh argues that because *Brinkley & West, Inc.*, a federal appellate decision, has not been cited by the state courts of Louisiana, its holding must be incorrect. This argument has no merit; since the

federal district courts of Louisiana, charged with the responsibility in diversity cases to sit, "in effect, [as] another court of the State," *Angel* v. *Bullington*, 330 U.S. 183 (1947), dutifully have followed the state courts' lead and likewise uniformly have held that the choice of law principles of the Restatement provide the rule for resolution of conflicts in the State of Louisiana. *See*, e.g.: *Southern Insurance Co.*, v. *Consumer Insurance Agency, Inc.*, 442 F. Supp. 30 (E.D. La. 1977); *Ardoyno* v. *Kyzar*, 426 F. Supp. 78 (E.D. La. 1976); *Commercial Union Insurance Co.* v. *The Upjohn Co.*, 409 F. Supp. 453 (W.D. La. 1976).

Against this backdrop, Hugh's argument that the Fifth Circuit somehow acted improperly in referring to the choice of law principles of the Restatement simply cannot be accepted. Hugh has not cited to the Court even one authority for the proposition that the application of such principles is at variance with the choice of law rules of Louisiana. Instead, from the premise that *Day and Zimmerman, Inc.* v. *Challoner*, 423 U.S. 3 (1975) a diversity case arising in Texas, properly forbade the disregard of Texas choice of law rules in the determination of applicable law, Hugh leaps to the conclusion that the Court of Appeals here committed "legal mischief" in identifying the choice of law principles of the Restatement as properly applicable in a Louisiana forum. A brief analysis of the *Challoner* decision in the context of Louisiana's development of choice of law rules shows the fallacy of Hugh's argument.

Prior to the decision of the Supreme Court of Louisiana in *Jagers*, the Fifth Circuit in *Lester* v. *Aetna Life Insurance*

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state courts of Louisiana are not bound by federal interpretations of state law, it is not surprising a federal decision would not be cited as authority. What is significant, and underscores the propriety of the Fifth Circuit's interpretation of *Jagers* in *Brinkley & West, Inc.*, is the fact that the Supreme Court of Louisiana declined to review the decisions in *Sutton* and *Wayne*, both of which applied interest analysis on the stated authority of *Jagers*.

Co., 433 F.2d 884 (5th Cir. 1970), a Louisana diversity case, carved out an exception to the rule of *Klaxon*, holding that a forum state's choice of law rules need not be followed in the instance of a "false conflict;" i.e., where only one state has a legitimate interest in the outcome of litigation. Certiorari was denied. 402 U.S. 909 (1971). Five years later, however, when the Fifth Circuit declined to apply the choice of law rules of Texas on the basis of the identical exception in *Challoner* v. *Day and Zimmerman, Inc.*, 512 F.2d 77 (5th Cir. 1975), this Court granted certiorari and reversed. *Day and Zimmerman, Inc.* v. *Challoner*, 423 U.S. 3 (1975). In a *per curiam* opinion, this Court held:

> "By parity of reasoning, the conflict-of-law rules to be applied by a federal court in Texas must conform to those prevailing in the Texas state courts. A federal court in a diversity case is not free to engraft onto those state rules exceptions or modifications which may commend themselves to the federal court, but which have not commended themselves to the State in which the federal court sits. The Court of Appeals in this case should identify and follow the Texas conflicts rule. What substantive law will govern when Texas' rule is applied is a matter to be determined by the Court of Appeals." 423 U.S. at 5.

Fairly read, Hugh's argument states nothing more than his contention that because the Fifth Circuit in *Challoner* once improperly declined to employ applicable state conflicts laws in a Texas diversity case, it must have again done so in this Louisiana diversity action. Perhaps that would be so had the Fifth Circuit here attempted to "engraft" onto Louisiana's choice of law rules some principle not otherwise there; however, as is clear from the above discussion of the recent development of Louisiana's choice of law rules, no such thing has occurred.

To the contrary, subsequent to *Lester*, the Supreme Court of Louisiana in *Jagers* adopted precisely the modern approach which the Court of Appeals has applied in the case

at hand.[17] By here carefully identifying and faithfully applying the choice of law rules announced by the courts of Louisiana, the Fifth Circuit clearly has carried out its *Erie/Klaxon* responsibilities in complete accord with the command of *Challoner*. A grant of certiorari, therefore, is unwarranted.

(b) The Decision Of The Fifth Circuit Comports Completely With La. Civ. Code Art. 10.

Hugh's argument that the Fifth Circuit's decision is incompatible with La. Civ. Code art. 10 is equally specious. Hugh pegs his contentions solely upon the provision of that article stating the general rule that the "form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed." Thus, Hugh claims, unless there is an exception to this rule, Louisiana law must apply in view of the fact that the January 16 Settlement was executed in a federal court located in Louisiana. Hugh's argument fails, however, precisely because such an exception is provided by the second sentence of La. Civ. Code art. 10, which Hugh fails to cite, stating:

> "But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect."

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[17] Making the identical point, the Court of Appeals remarked that the *Jagers* opinion was rendered "subsequent to *Challoner*." The Estate suggests that the Court obviously intended a reference to *Lester*, and the reference to *Challoner* was simply an inadvertent reference. The Estate scarcely believes, as Hugh suggests, that the Fifth Circuit was attempting to "alter the calendar" in an effort to flaunt this Court. Of course, from a legal viewpoint it makes no difference whether *Jagers* preceded or followed *Challoner*. The critical fact is that the Supreme Court of Louisiana's adoption of the modern conflicts approach in *Jagers* preceded the case at hand.

In applying this provision to dispose of Hugh's objections to the application of Texas law, the District Court held succintly:

> "The final subject of dispute consists of Hugh's related objections to the choice of Texas law to govern the agreement, and to the waiver of future inheritance rights. Hugh properly asserts that Louisiana law looks with disfavor upon attempts to waive future inheritance rights. However, as none of the parties reside in Louisiana, that substantive policy is of no consequence. Art. 10 of the Civil Code requires application of the law of the place where the contract is to have effect, which, in the case of the persons being released by Hugh, is Texas. Hugh does not claim that the waiver is void under the law of Texas.
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> "For the same reason, it is clear that the parties intended Texas law to govern the agreement. Under accepted canons of construction, the parties must be deemed to have intended to create an enforceable contract. A court should not lightly read an agreement in such a way as to frustrate this intent. To require application of Louisiana law would defeat the aim of the parties, most of whom reside in Texas. Accordingly, the Court finds that the Master Settlement Agreement properly reflects the intent of the parties to the January 16 agreement." (App. E, P.43a-44a).[11]

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[11] In its original typewritten Memorandum Ruling, distributed to the parties by the Court, the Court included a typographical error in the quoted material to the effect that most of the parties "reside in Louisiana." The error was brought to the attention of the Court and corrected in the version submitted for publication. *See: Lee* v. *Hunt,* 483 F. Supp. 826 (W.D. La. 1979), at 837. Nonetheless, in his petition (P. 10), Hugh deliberately has quoted from and included in the Appendix (P. D 15) the unpublished, erroneous version of the District Court's Memorandum Ruling, stating that most of the parties reside in Louisiana. As the Estate has pointed out at n. 4, above, none of the parties to the January 16 Settlement was a resident of Louisiana; the District Court was quite correct in pointing out that the great majority of the parties reside in Texas.

As the Fifth Circuit held, the District Court's analysis in this regard is clearly correct. None of the parties to either the January 16 Settlement or Master Settlement Agreement is domiciled in Louisiana. Virtually all of the parties primarily interested in the waiver of inheritance rights (the Estate, members of Group 2, and members of Group 3) are domiciled in Texas; the great bulk of their property is located there; and it is there that the waiver of inheritance rights will be operative. Thus the selection of Texas law to govern the interpretation and validity of this element of the January 16 Settlement and Master Settlement Agreement comports completely with the requirement of La. Civ. Code art. 10 that: ". . . the effect of acts passed in one [state], is regulated by the laws of the [state] where such acts are to have effect."[19]

The interpretation given La. Civ. Code art. 10 by the Fifth Circuit and District Court is in complete accord with the treatment given that article in the Louisiana jurisprudence. As stated in *Universal C.I.T. Credit Corp.* v. *Hulett,* 151 So. 2d 705 (La. App. 3d Cir. 1963):

> " 'In Louisiana, the rule has been generally stated to be that the law of the place where the contract is to have effect determines the rights and obligations of the parties.' " 151 So. 2d at 707, and authorities there cited.

See also: DeMary v. *Fontenot,* 161 So. 2d. 82 (La. App. 3d Cir. 1964) writ den. 163 So. 2d 360 (1964).

To the extent Hugh is viewed as arguing that La. Civ. Code art. 10 (despite its literal language) must nevertheless be read as requiring adherence to the rule of *lex loci contractus,* it is clear from the Louisiana jurisprudence that such interpretation was put to rest by the decision of the Supreme

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[19] Texas law expressly condones the waiver or assignment of prospective inheritance rights. *See:* e.g., *Trevino* v. *Turcotte,* 564 S.W. 2d 682 (Tex. 1978); *McConwell* v. *Corgey,* 262 S.W. 2d 944 (Tex. 1953).

Court of Louisiana in *Jagers. See: Sutton* v. *Langley,* 330 So. 2d 321 (La. App. 2d Cir. 1976) writ den. 333 So. 2d 242 (1976); *Wickham* v. *Prudential Ins. Co. of America,* 366 So. 2d 951 (La. App. 1st Cir. 1978).

In view of the proper interpretation given La. Civ. Code art. 10 by the Fifth Circuit and District Court, there exists no need for review.

3. The Balance Of Hugh's Complaints Involve The Factual Findings Of The Lower Courts Which Are Not Properly Subject To Review On Writ Of Certiorari.

Beyond his arguments respecting choice of law, those complaints which Hugh cites represent nothing more than his contentions of fact argued to and rejected by both the District Court and the Fifth Circuit. To this extent, Hugh's claims in this Court must be viewed as simply an expression of his disagreement with the factual conclusions of the lower courts and dissatisfaction with the result of his case. Such argument, unsupported by proper reference to the considerations governing review on certiorari set forth in Rule 17 of the Rules of the Supreme Court, must be looked upon simply as an attempt by Hugh to relitigate issues decided unfavorably as to him below. Clearly such is not the function of review on certiorari.

For the reasons given above, the Fifth Circuit properly concluded on the basis of Louisiana's choice of law rules that Texas law should govern the construction and validity of the January 16 Settlement and Master Settlement Agreement. This holding was based not only upon the principles of interest analysis, but also upon the express factual finding of the District Court that all parties, including Hugh, intended Texas law to govern their agreement, which conclusion squarely was affirmed by the Fifth Circuit.

It is well settled that this Court will not undertake to review concurrent factual findings entered by two courts below "in the absence of a very obvious and exceptional show

of error." *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275 (1949); *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635 (1967).

In this regard the only evidence which Hugh can muster is his claim that he did not intend that Texas laws should control the terms and provisions of the January 16 Settlement. Interestingly, as noted by the Fifth Circuit (App. C, p.12a), in his initial appeal Hugh did not challenge the holding of the District Court that, based upon principles of interest analysis, the law of Texas should apply. Only as an afterthought, in connection with his petition for rehearing, did Hugh contest the factual findings of the lower courts respecting the intention of the parties to the January 16 Settlement and Master Settlement Agreement.

The Estate suggests that Hugh's unsupported assertions respecting alleged errors in the factual findings of the lower courts do not form a sufficient basis for writ of certiorari. On the basis of the evidence before them, the lower courts concluded that it was clearly within the contemplation of the parties that Texas law would govern and control the Master Settlement Agreement. To permit Hugh to argue belatedly that Louisiana law should somehow be employed to invalidate the January 16 Settlement serves not to protect Hugh's legitimate expectations but, rather, serves to perpetuate his admitted motive of attempting to avoid any and all obligations undertaken by him in connection with the January 16 Settlement (App. E, P.39a).

CONCLUSION

Hugh must not be permitted, by his litany of factual complaints respecting the findings and conclusions of the Fifth Circuit and District Court, to blur the context in which this action arose — a proceeding to enforce a compromise and settlement agreement entered into in the course of pending federal litigation by compelling Hugh's execution of the

documents necessary to memorialize and implement the terms and provisions of the agreement.

There simply is no issue at present respecting the enforceability of the January 16 Settlement and Master Settlement Agreement or the waiver of future inheritance rights. Hugh's petition in no way involves any claim on Hugh's part that he effected an unenforceable waiver of inheritance rights as respects the succession of the late Mr. Hunt. In fact, Mr. Hunt was deceased for a number of years at the time Hugh executed the January 16 Settlement; therefore, as respects the succession of Mr. Hunt, there simply were no "future" inheritance rights which Hugh might release.[20]

The inherent power of a federal district court to enforce a compromise entered into in the context of pending litigation is well settled. *Pearson* v. *Ecological Science Corp.*, 522 F.2d 171 (5th Cir. 1975); cert. den. sub nom., *Skydell* v. *Ecological Science Corp.*, 425 U.S.912 (1976); *Massachusetts Casualty Ins. Co.* v. *Forman*, 469 F.2d 259 (5th Cir. 1972). Thus the primary issue before the lower courts was whether Hugh obligated himself pursuant to the January 16 Settlement to execute the releases and assignments of inheritance rights contemplated and required by that agreement with the intention that such releases and waiver and assignments of inheritance rights be valid and enforceable in each and every jurisdiction whose laws might govern a decedent or property involved at some later date when the inheritance rights so waived or assigned might become the subject of controversy. The District Court, finding Hugh so obligated, properly exercised its power of enforcement, and the Fifth Circuit affirmed.

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[20] Under the terms of Mr. Hunt's will, an undivided one-fourteenth of his Louisiana estate was bequeathed to a trust under which Hugh is both income and principal beneficiary. This bequest is unaffected by the January 16 Settlement and Master Settlement Agreement.

For the foregoing reasons, the Fifth Circuit's affirmance of the District Court's decision should stand.

Respectfully submitted,

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APPENDIX

APPENDIX A

SUPREME COURT OF THE UNITED STATES

No. A-849

HUGH S. HUNT, *Petitioner,*

v.

FRANIA TYE LEE, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 30, 1981.

/s/ LEWIS F. POWELL, JR.
Lewis F. Powell, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 9th
day of April, 1981.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 80-3211

MRS. FRANIA TYE LEE, *Plaintiff,*

v.

RAY LEE HUNT, Executor of
the Estate of H.L. HUNT, *Defendant-Appellee,*

v.

HUGH S. HUNT, *Defendant-Appellant.*

Appeal from the United States District Court for the
Western District of Louisiana

(Filed January 13 1981)

ON PETITION FOR REHEARING

(January 13, 1981)

Before GEE, RUBIN and RANDALL, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ CAROLYN DANIEL RANDALL
Carolyn Daniel Randall
United States Circuit Judge

APPENDIX C

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.
UNIT A

No. 80-3211

Summary Calendar.

MRS. FRANIA TYE LEE, *Plaintiff*

v.

RAY LEE HUNT, Executor of
the Estate of H.L. Hunt, *Defendant-Appellee,*

v.

HUGH S. HUNT, *Defendant-Appellant.*

Dec. 1, 1980

Rehearing Denied Jan. 13, 1981

Appeal from the United States District Court for the Western District of Louisiana

Before GEE, RUBIN and RANDALL, Circuit Judges.

RANDALL, Circuit Judge:

This appeal arises from a suit originally filed in 1975 by Mrs. Frania Tye Lee, who is the mother of the Appellant herein, Hugh S. Hunt (a/k/a Hugh Lee Hunt, hereinafter "Hugh Hunt"), against the executor of the Estate of H.L. Hunt, alleging a putative marriage with the late H.L. Hunt and, as such, an entitlement to a community interest in property acquired during the alleged relationship. After lengthy litigation on jurisdiction, venue and related matters, *Lee* v. *Hunt*, 410 F.Supp. 329 (M.D.La.1976); *Lee* v. *Hunt*, 415

F.Supp. 245 (M.D.La.1976); *Lee* v. *Hunt*, 431 F.Supp. 371 (W.D.La.1977) the matter was finally tried before a jury between January 9 and January 16, 1978. On January 16, counsel for the respective parties requested a conference in chambers with the trial judge, at which time they advised the court that they had reached an agreement of settlement of the pending lawsuit. The judge requested that the parties dictate the terms of the agreement to the court reporter in his chambers. During a brief recess the dictated settlement was transcribed, and eleven persons-including Hugh Hunt-thereafter signed it. The district court discharged the jury and, on January 23, 1978, entered a judgment of dismissal with prejudice based upon the January 16 settlement. Pursuant to this agreement, counsel for the Hunt Estate then prepared a "master settlement agreement" which spelled out in greater detail the agreement among the parties. All of the necessary parties (nineteen in all) signed this document, with the exception of Hugh Hunt.

Having failed to persuade Hugh Hunt, counsel for the Hunt Estate filed a petition to enforce the settlement agreement on September 26, 1978. On the same date the district court joined Hugh Hunt as a party defendant to the action, pursuant to Fed.R.Civ.P. 19(a), and ordered him to show cause why the settlement should not be enforced. In response to the petition and these orders, Hugh Hunt filed two motions: (1) to vacate or modify judgment, Fed.R.Civ.P. 60(b); and (2) to dismiss the petition pursuant to Fed.R.Civ.P. 12(b)(1),(2),(5) and (6), that is, for lack of subject matter and personal jurisdiction, for insufficiency of service of process, and for failure to state a claim upon which relief can be granted. On December 7, 1978, the district court held a plenary hearing on the petition. At that time counsel for Hugh Hunt withdrew the Rule 60(b) motion. On December 19, 1979, the district court entered a memorandum ruling, *Lee* v. *Hunt*, 483 F.Supp. 826 (W.D. La.1979), in which it rejected all of Hugh Hunt's Rule 12(b) claims and held that the January 16 settlement agreement was binding on Hugh Hunt

and that all of the provisions of the master settlement agreement were within the contemplation of the earlier agreement. Accordingly, the court entered final judgment on December 27, 1979, ordering Hugh Hunt to execute the master settlement agreement.

Hugh Hunt now appeals from this order. He does not argue with the district court's rulings under Rule 12(b) and does not seek to reassert his Rule 60(b) motion. Rather, he raises a confused variety of factual and legal challenges to the memorandum ruling and order of the district court. These arguments fall roughly into the following categories: (1) that there was no "meeting of the minds" and therefore no contract in the January 16 meeting; (2) that he may avoid the contract under doctrines of duress, undue influence and failure of consideration; (3) that the master settlement agreement is not a reasonable expression of the terms of the January 16 agreement; and (4) that certain provisions of the agreement are *contra bones mares* under Louisiana law. We deal with these arguments in turn after determining the applicable state law and reviewing the circumstances of the January 16 agreement.

I. CHOICE OF LAW

A threshold question in this case is the choice of law by which the settlement agreement should be judged. Although federal courts possess the inherent power to enforce agreements entered into in settlement of litigation,[1] the construction and enforcement of settlement agreements is governed by principles of state law applicable to contracts generally. *E. g., Florida Education Association, Inc.* v. *Atkinson*, 481 F.2d 662 (5th Cir. 1973). In accordance with *Klaxon Co.* v. *Stentor*

[1] *E.g., Pearson* v. *Ecological Science Corp.*, 522 F.2d 171 (5th Cir. 1975), *cert. denied sub nom. Skydell* v. *Ecological Science Corp.*, 425 U.S. 912, 96 S.Ct. 1508, 47 L.Ed.2d 762 (1976); *Massachusetts Casualty Insurance Co.* v. *Forman*, 469 F.2d 259 (5th Cir. 1972); *Cia Anon Venezolana de Navegacion* v. *Harris*, 374 F.2d 33 (5th Cir. 1967).

Electric Manufacturing Co., Inc., 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941), and its progeny, federal courts must, in such cases, apply the choice of law rules of the forum state, in this case Louisiana. Thus, the district court correctly referred to La.Civ.Code Art. 10, which provides, in pertinent part:

> The form and effect of public and private instruments are governed by the laws and usages of the places where they are passed or executed.

It is not immediately clear how the district court went from this provision to the conclusion that Texas law applies in this case; the contract of settlement was executed in Louisiana.[2] Nevertheless, a close analysis of the applicable choice of law principles convinces us that Texas law does govern the interpretation of the settlement agreement.

Louisiana choice of law rules (and their interpretation by federal courts) have been in a state of confusion for some time. During the 1960's a line of cases evolved in both the intermediate Louisiana appellant courts[3] and in federal courts in

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[2] The district court reasoned as follows, 483 F.Supp. at 837:

> The final subject of dispute consists of Hugh's related objections to the choice of Texas law to govern the agreement, and to the waiver of future inheritance rights. Hugh, properly asserts that Louisiana law looks with disfavor upon attempts to waive future inheritance rights. However, as none of the parties reside in Louisiana, that substantive policy is of no consequence. Article 10 of the Civil Code requires application of the law of the place where the contract is to have effect, which, in the case of the persons being released by Hugh, is Texas. Hugh does not claim that the waiver is void under the law of Texas.

Despite this analysis, the district court relied on Louisiana law elsewhere in its opinion. 483 F. Supp. at 834, 835, 837. Similarly, both parties to this appeal rely inconsistently on both Louisiana and Texas law.

[3] *E.g.*, *Universal C.I.T. Credit Corp.* v. *Hulett*, 151 So.2d 705 (La.App., 3rd Cir. 1963) (Judge Tate); *Doty* v. *Central Mutual Insurance Co.*, 186 So.2d 328 (La.App., 3rd Cir. 1966) (concurring

this circuit[4] which applied a more modern approach to choice of law rules — looking to the "center of gravity," or to the state with the "most significant contacts" — rather than applying the literal wording of the Louisiana Code. *See generally Restatement (Second) of Conflict of Laws* §§6, 188 (1971). But this approach was rejected by the Louisiana Supreme Court in *Johnson* v. *St Paul Mercury Insurance Co.*, 236 So.2d 216 (La. 1970). We subsequently recognized Louisiana's adherence to the strict wording of Article 10 in *Lester* v. *Aetna Life Insurance Co.*, 433 F.2d 884 (5th Cir.), *cert. denied*, 402 U.S. 909, 91 S.Ct. 1382, 28 L.Ed.2d 650 (1971), but upheld the district court's application of the modern approach by carving out an exception to the rule of *Klaxon*. We held that we were not bound by the choice of law rule of the forum state where only a "false conflict" exists, that is, where only one state has any legitimate interest in the case. Our holding was not an attempt to overrule the Louisiana Supreme Court's strict interpretation of Article 10, or to eviscerate *Klaxon*; rather, we sought to except the general *Klaxon* rule only in those extreme cases where " 'one of two states related to a case has a legitimate interest in the application of its law and the other has none.' " 433 F.2d at 890. Our exception was, however, rejected by the Supreme Court in *Day and Zimmerman, Inc.* v. *Challoner*, 423 U.S. 3, 96 S.Ct. 167, 46 L.Ed.2d 3, *overruling Challoner* v. *Day and*

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opinion of Judge Tate); *Blanchard* v. *Blanchard*, 180 So.2d 564 (La.App., 3rd Cir. 1965) (concurring opinion of Judge Tate). In these cases Judge Tate found authority for the modern approach in the second sentence of La.Civ.Code Art. 10, which provides:

> But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect.

[4] *E.g.*, *Franklin* v. *Texas International Petroleum Corp.*, 324 F.Supp. 808 (W.D.La.1971).

Zimmerman, Inc., 512 F.2d 77 (5th Cir. 1975), in a short *per curiam* opinion which concluded:

> By parity of reasoning, the conflict—of—laws rules to be applied by a federal court in Texas must conform to those prevailing in the Texas state courts. A federal court in a diversity case is not free to engraft onto those state rules exceptions or modifications which may commend themselves to the federal court, but have not commended themselves to the State in which the federal court sits.

423 U.S. at 4, 96 S.Ct. 15 168. *See generally* C. Wright, *Law of Federal Courts* §57, at 264-65(3rd ed. 1976).

Following *Challoner*, we are bound by the interpretation of Article 10 adopted by the Louisiana courts. Subsequent to *Challoner*, however, the Louisiana Supreme Court overruled *Johnson* in favor of more modern approach to conflicts of law. *Jagers* v. *Royal Indemnity Co.*, 276 So.2d 309 (La. 1973). Unfortunately, *Jagers* is far from clear. *Jagers* apparently created an exception to the strict Louisiana choice of law rules by holding that only a "false conflict" existed in the case; that is, the Louisiana Supreme Court adopted the reasoning of this court in *Lester* and *Challoner* and held that conflicts of law principles did not apply in cases of "false" conflicts.[5] But *Jagers* can be read to go even farther than this. After holding that the state choice of law rule did not apply in cases of false conflict, the court cryptically stated:

> That some modern methods for determining whether to apply the law of the forum are faulty in some respects

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[5] In *Challoner*, the Supreme Court rejected the "false conflicts" doctrine as an exception to the rule of *Klaxon*. But it left the door open for state courts to adopt the doctrine as an exception to their own local choice of law statutes. *Challoner* v. *Day and Zimmerman, Inc.*, 423 U.S. 3, 5, 96 S.Ct. 167, 168, 46 L.Ed.2d 3 (1975) (Blackmun, J., concurring).

should not deter a court in the application of the law of the forum to its citizens, when not otherwise prohibited.

A footnote to this statement is as follows:

For choice—of—law principles, see Restatement, Second, Conflict of Laws, §6 (1969):

"(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

"(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

"(a) The needs of the interstate and international systems,

"(b) the relevant policies of the forum,

"(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

"(d) the protection of justified expectations,

"(e) the basic policies underlying the particular field of law,

"(f) certainty, predictability and uniformity of result, and

"(g) ease in the determination and application of the law to be applied."

276 So.2d at 312.

Shortly after *Jagers,* this court was faced with a Louisiana choice of law question in *Brinkley & West, Inc.* v. *Foremost Insurance Co.,* 499 F.2d 928 (1974). We concluded that the Louisiana Supreme Court's opinion in *Jagers* in effect adopts the analysis of the *Restatement* as the law of Louisiana. Still the *Restatement* arguably allows for the strict interpretation of Article 10 in cases involving a real (as opposed to "false") conflict of law, since the interest analysis is to be used only where there is no statutory directive (*i.e.*, Article 10) to the contrary. But after finding that the conflict in

Brinkley & West, Inc. was a real one, we went on to apply the interest analysis set forth in the second paragraph of the *Restatement* provision, thereby implicitly finding that Article 10 is not to be strictly construed even in cases of real conflicts. Since *Brinkley & West, Inc.* was decided, the *Jagers* opinion has been interpreted by at least two intermediate appellate courts in Louisiana. *Brannon* v. *Babin* 366 So.2d 955 (La.App., 1st Cir. 1978); *Sutton* v. *Langley,* 330 So.2d 321 (La.App., 2d Cir.), *writ denied,* 332 So.2d 805, 820, and 333 So.2d 321 (1976). In both cases the court held that the modern "interest analysis" is the correct choice of law rule in Louisiana — whether the conflict is "real" or "false." We can therefore reaffirm our analysis in *Brinkley & West, Inc., supra,* and conclude (1) that the current approach to the choice of law in Louisiana is that embodied in the *Restatement, supra,* and (2) that under that approach the interest analysis of the second paragraph of the *Restatement* is to be applied in all cases, regardless of the literal reach of Article 10.

The district court found that Texas has a greater interest in this settlement than does Louisiana and that the law of Texas accordingly must govern the interpretation and validity of the settlement agreement. As virtually all of the parties to the settlement agreement are residents of Texas (only Mrs. Lee is a resident of Louisiana), and the bulk of the property at issue is located in Texas, the district court's conclusion is clearly correct. We note that the parties do not challenge that holding.[6]

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[6] Louisiana will honor a stipulation of the parties regarding the choice of law. La.Civ.Code Art. 11; *Fine* v. *Property Damage Appraisers, Inc.,* 393 F.Supp. 1304 (E.D.La.1975). The master settlement agreement does provide that Texas law shall govern the agreement, and the district court adds that such was the implicit understanding of the original agreement (since the parties must have intended an enforceable contract, and under Louisiana law, according to Hugh Hunt's argument, there is some doubt about this con-

II. THE JANUARY 16 AGREEMENT

The judge began the January 16 meeting in his chambers by explaining the purposes of the conference as follows:

> Now, as I understand it and for the purpose of the record, there have been discussions concerning a negotiated settlement of this lawsuit, that the parties are in agreement and for the purpose of placing the terms of the agreement in writing, the court has made use of and is now making use of the instantaneous court reporters who will transcribe now the terms of the settlement, which will be then typed and after being typed will be signed by all parties to the lawsuit and other members of both families will have a place to sign their names indicating their full agreement with the terms.

Record at 3456. The judge then requested counsel for the parties to list the provisions of the settlement agreement. Before the parties listed these terms, the judge stated again:

> Well, I am providing these offices for the purpose of the parties and when you all have reached an agreement and are ready to execute it, then I want to supervise it.

Record at 3456. The attorney who stated the agreement began by saying the following:

> Following the negotiations between all parties that are present here and that the parties here represent that they are authorized to speak on behalf of the other members of their family or respective families and in order to bring this entire litigation to a conclusion and in addition to this litigation any other claims of any nature or kind which any member of the Hunt family may have one against the other of any nature or kind, the following agreement has been reached.

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tract's validity). 483 F.Supp. at 837. The choice of law is not mentioned in the January 16 conference, however, and there is no indication that anyone was aware of Hugh Hunt's arguments under Louisiana law at that time. Since the applicable choice of law rule comes to the same result, we need not reach this question.

Record at 3458. During the course of the discussion, Hugh Hunt expressed some doubt as to his ability to legally sign away his children's rights. And, when attorneys for the Hunt Estate said that each branch of the Hunt family would release all of its rights of inheritance from other branches of the family, Hugh Hunt disagreed that this had been the understanding reached prior to the conference. The court appears to have agreed with counsel for the Hunt Estate. The following colloquy then took place:

> THE COURT: In other words, all of the parties who have discussed this matter up to this point have understood that this was a final settlement.
>
> MR. HUGH LEE HUNT: Your honor, I want to make a statement. I am here because my mother is taking four pills a day for her heart. I have been advised by my attorneys that if she dies, her rights die and I will sign whatever papers you want, and I would like to leave the chambers, please.
>
> THE COURT: You may, sir.
>
> (Thereupon Mr. Hugh Lee Hunt left the chambers.)

Record at 3468. At this point the rest of the parties completed their statement of the terms of the agreement. At the conclusion of the conference, the judge had the transcript typed up. At the end of the transcript is a place for the signatures of all the parties; Hugh Hunt's signature appears there, along with that of other parties to the agreement.

III. THE "MEETING OF THE MINDS" IN THE JANUARY 16 AGREEMENT

Hugh Hunt contends that there was no "meeting of the minds" in the January 16 conference, and that the transcript of that meeting therefore cannot represent a final binding contract under applicable state law. Most of this argument consists of challenges to factual findings of the district court. These findings include: (1) that Hugh Hunt did intend to bind himself by his signature to the January 16 transcript; and (2)

that he understood the January 16 agreement to be a complete statement of the terms of the settlement. 483 F.Supp. at 835. Insofar as material facts are disputed in the course of a proceeding to enforce a settlement agreement, the district court should hold a hearing to obtain evidence on the factual matters in dispute *Massachusetts Casualty Insurance Co.* v. *Forman,* 469 F.2d 259 (5th Cir. 1972). The trial judge did hold a full hearing on this petition and heard testimoy from Hugh Hunt and from his mother, Mrs. Lee. Factual findings pursuant to such a hearing must be accepted unless they are "clearly erroneous" within the meaning of Fed.R.Civ.P. 52(a). *Pearson* v. *Ecological Science Corp.,* 522 F.2d 171 (5th Cir. 1975), *cert. denied sub nom. Skydell* v. *Ecological Science Corp.,* 425 U.S. 912, 96 S.Ct. 1508, 47 L.Ed.2d 762 (1976). On the basis of the record, and in particular the transcript of the January 16 meeting, we cannot say that these findings were clearly erroneous.

Hugh Hunt also argues that it was his understanding that counsel for the Hunt Estate would require the signature of his wife and of his descendants, while in fact the Estate did not insist on these signatures. The district court incorrectly relied on Louisiana law in holding that this misunderstanding did not negate the "meeting of the minds" in the January 16 agreement. 483 F.Supp. at 834-35. But the result is no different under Texas law. Whether these signatures would be required is not relevant to Hugh Hunt's obligations. They were purely for the benefit of the Hunt Estate, as they served only to waive rights against the Estate and those claiming under it. The Estate therefore has the right to waive the requirement without forfeiting any other right under the agreement; under Texas law, a party to a contract may waive the performance of any contractual provision that is to his benefit. *E.g., Gulf Production Co.* v. *Continental Oil Co.,* 164 S.W.2d 448 (Tex. 1942). Nevertheless, Hugh Hunt maintains that he *believed* that he would not be bound until his wife and descendants signed, and that consequently he signed the transcript under a mistake of law. In the first place, mistake generally does not

excuse contractual obligations unless it is mutual (or is induced by the other party). *E.g., Anderson Brothers Corp.* v. *O'Meara,* 306 F.2d 672 (5th Cir. 1962). There is no suggestion in the record that any other party to the agreement was under the same misimpression of Texas law, or that any party induced Hugh Hunt's misunderstanding. In the second place, a pure mistake of law generally cannot excuse contractual obligations. *E.g., Hall* v. *Hays,* 441 S.W.2d 275 (Tex.Civ.App.-El Paso 1969, no writ history); *Ussery* v. *Hollebeke,* 391 S.W.2d 497 (Tex.Civ.App.-El Paso 1965, writ ref. n. r. e.); *Harris* v. *Sanderson,* 178 S.W.2d 315 (Tex.Civ.App.-Eastland 1944, writ ref. w. o. m.). Therefore, the fact that Hugh Hunt may have mistakenly understood the applicable law to exempt him from the binding force of his signature cannot excuse him from the settlement agreement.

IV. DURESS, UNDUE INFLUENCE, AND FAILURE OF CONSIDERATION

Hugh Hunt urges several affirmative defenses to any contract which may have been formed in the January 16 conference. These defenses center around the emotional strain and pressures of the settlement negotiations:

> The Court should consider the posture in which Hugh Hunt found himself at that tense and compelling moment in this already emotionally charged litigation. He unhappily discovered himself inexorably drawn into the vortex of these settlement negotiations, without benefit of personal legal counsel. He thusly became torn between his own innermost feelings of dismay at what seemed to be transpiring and the unclear effects thereof on his personal welfare, as opposed to what legal counsel for his mother were strongly pressing upon him as being in her best interests.

Appellant's Brief at 25. Hugh Hunt may indeed have been under great pressure at this time, and the record shows that the emotional strain caused him to leave the meeting before it was completed. But these facts do not establish either duress

or undue influence under Texas law. One state court has defined duress as follows:

> [O]ur courts of Texas have consistently followed the rule, as a matter of law, that (1) there can be no duress unless there is a threat to do some act which the party threatening has no legal right to do; (2) there must be some illegal exaction or some fraud or deception; (3) the restraint must be imminent and such as to destroy free agency without present means of protection.

Tower Contracting Co., Inc., of Texas v. *Bruden Brothers, Inc.*, 482 S.W.2d 330, 335 (Tex.Civ.App.—Dallas 1972, writ ref. n. r. e.). *See also Mitchell* v. *C.C. Sanitation Co.*, 430 S.W.2d 933 (Tex.Civ.App.—Houston [14th Dist.] 1968, writ ref. n. r. e.); *Sanders* v. *Republic National Bank of Dallas*, 389 S.W.2d 551 (Tex.Civ.App.—Tyler 1965, no writ history). In order to prove undue influence, one must demonstrate that "persuasion, entreaty, importunity, argument, intercession, and solicitation" were so strong as to "subvert and overthrow the will of the person to whom they are directed." *DeGrassi* v. *DeGrassi*, 533 S.W.2d 81, 85 (Tex.Civ.App.—Amarillo 1976, writ ref. n. r. e.). *See Curry* v. *Curry*, 270 S.W.2d 208 (Tex.1954). Duress and undue influence are difficult defenses to establish. Certainly they are not suggested by the facts of this case; emotional strain and negotiation pressures are not by themselves enough to overcome the will of the party to a contract, and there is no evidence that they resulted from threats, illegal exaction, fraud or deception.

Hugh Hunt makes the related argument that he received nothing in return for his signature on the transcript of the January 16 meeting. It is true that the agreement guaranteed him none of the final settlement amount, which was to be distributed in accordance with his mother's directions. But a party need not receive the benefit of a contract in order to be bound by it; it is enough that the party seeking to hold another to the contract suffer a legal detriment. So long as consideration is sufficient to support the contract, which party actually receives the consideration is irrelevant. *E.g., Loomis*

v. *Skillerns—Loomis Plaza, Inc.*, 593 S.W.2d 409 (Tex.Civ.App.—Dallas 1980, no writ history); *Mercantile National Bank at Dallas* v. *Hudgens*, 412 S.W.2d 364 (Tex.Civ.App.—Ft. Worth 1967, writ ref. n. r. e.); *Minton* v. *Riverside State Bank*, 399 S.W.2d 196 (Tex.Civ.App.—Ft. Worth 1966, no writ history).

V. THE MASTER SETTLEMENT AGREEMENT

Hugh Hunt argues that the master settlement agreement which the district court ordered him to execute is not a reasonable statement of the terms of the January 16 agreement. The most important area of dispute centers around the scope of the releases contained in the final document. In brief, the master settlement agreement provides for the following releases:

1. Mrs. Lee and her descendants release the other parties from all claims arising from the relationship between Mrs. Lee and H. L. Hunt, including the birth of children from the relationship;

2. All parties accept as valid the duly probated will of H. L. Hunt;

3. All parties waive all forced heirship rights;

4. All parties agree not to prosecute or aid in the prosecution of suits arising from the relationship between Mrs. Lee and H. L. Hunt, including suits to determine status;

5. Mrs. Lee and her descendants assign to the other parties, in shares set forth in the agreement, their rights of inheritance from those parties, including all rights under state intestacy statutes and all testate claims that are not specifically established (or reestablished) after the date of the agreement; and all other parties assign their like rights to inheritances from Mrs. Lee and her descendants, to Mrs. Lee and her descendants in specified shares;

6. All parties agree to dismiss all ongoing litigation among themselves, with the exception of one certain suit brought by Hugh Hunt in Georgia; and

7. Mrs. Lee and her descendants release any and all claims which they have against the other parties which do not arise out of the relationship between Mrs. Lee and H. L. Hunt but are already in existence at the date of the agreement; and the other parties likewise release Mrs. Lee and her descendants.

See Record at 3255-270. Hugh Hunt argues that these provisions depart from the intent of the earlier agreement by broadening the scope of the proposed releases. First, as Hugh Hunt describes the January 16 agreement it contemplated a release of only those claims which arose out of the alleged putative marriage between Mrs. Lee and H. L. Hunt, and did not call for a release of either present or future claims which are independent of that relationship. (*Cf.* paragraph 7 above.) Second, he maintains that the January 16 agreement did not contemplate the release of inheritance rights other than those derived from the relationship between Mrs. Lee and H. L. Hunt. Although it is not clear precisely what rights he is referring to, they would appear to be testate rights, i. e., claims which Mrs. Lee and her descendants may have by virtue of wills written by other parties to the settlement agreement. (*Cf.* paragraph 5 above.) And third, Hugh Hunt maintains that the January 16 agreement did not call for a relinquishment by him of his children's rights. (*Cf.* paragraphs 1, 2 and 5 above.)

The transcript shows that the agreement was not clear in all respects on January 16, and there is ample room for argument about the intended scope of the releases.[7] With respect

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[7] The attorney for the Hunt Estate stated the agreement as follows:

> MR. COOK (counsel for the Estate): Item two. That Mrs. Lee and all of her descendants would sign a release releasing all parties from any claim, including future inheritance rights in

to the agreement's release of claims unrelated to the relationship between Mrs. Lee and H. L. Hunt, there is language in the transcript describing the agreement as "a final settlement"

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the Estate of any members of the Hunt family, which release will contain appropriate indemnity provisions.

MR. FRITCHIE (counsel for Mrs. Lee): You are now talking — excuse me — I have to ask you at this point when you say "All rights of future inheritance" he means by operation of law?

THE COURT: By operation of law.

MR. COOK: That is right.

MR. FRITCHIE: When you say, "Mrs. Lee and all of her descendants," you are talking about Mrs. Lee and those of her descendants who are of the age of majority?

MR. COOK: And their respective spouses, and I think at this time it might be well to list all of the parties to be included.

Record at 1263. Later in the meeting Hugh Hunt was asked whether his children would sign the agreement. The following colloquy then took place:

MR. HUGH LEE HUNT: You see, we never talked about inheritance rights, God forbid that something should happen that the entire first family should be wiped out, let's say something like that did happen.

MR. HIRSCHKOP (counsel for Herbert and Lamar Hunt): Give you all inheritance rights?

MR. HUGH LEE HUNT: We would have inheritance rights I understand by Texas law.

MR. COOK: This is what is being settled at this time, this is being released.

MR. HUGH LEE HUNT: We never agreed to this, there was no discussion on this.

MR. HUNTER: Yes, there was.

MR. HUGH LEE HUNT: There was discussion on the fact that we would not do anything on public statements and everything else like that.

MR. FRITCHIE: That you would give up inheritance rights.

MR. HUGH LEE HUNT: Anything having to do with this suit, with the issue of this suit we would not be involved in, but if you remember there was some discussion about —

MR. HUNTER: (Interposing) What inheritance rights is anybody conceivably talking about other than possibly col-

and a release "from any claim." But the court also describes the agreement as only a settlement "as to this lawsuit and as to any possible inheritance rights." There is an even more direct conflict on the issue of inheritance rights. When asked about them at the outset, counsel for the Hunt Estate agreed with counsel for Mrs. Lee that "all rights of future inheritance" meant only such rights as exist "by operation of law," which would appear to exclude testate rights. But at a later point in the transcript the court refers to "any possible inheritance rights should they occur," and appears to disagree with Hugh Hunt's understanding that the parties had intended to limit the releases to rights related to the subject matter of the lawsuit. As to releases which affect the rights of the signatories' descendants, Hugh Hunt expressed some doubt as to his ability to "legally sign away any of my children's rights." These doubts were never specifically addressed by counsel for the Hunt Estate, and the master settlement agreement does in effect waive rights of the signer's descendants.[8]

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lateral heirs inheriting from someone else if they did not leave a will or something?

THE COURT: That's the question and that is the only thing that is being discussed and it was discussed here in chambers that the settlement was as to this lawsuit and as to any possible inheritance rights should they occur, and I understand that to be the basis of the settlement also.

MR. HUNTER: I understand that, too, Judge, there is no question.

THE COURT: In other words, all of the parties who have discussed this matter up to this point have understood that this was a final settlement.

Record at 1265-1267. It was at this point that Hugh Hunt became upset and left the judge's chambers. No further discussion involved the releases to be included in the final document, aside from an agreement among the parties that all lawsuits would be dismissed except for Hugh Hunt's existing suit in Georgia.

[8] The master settlement agreement purports to bind the heirs, successors, assigns and legal representatives of all of the signatories. Under Texas law, the waiver of future interests and expectancies

Under Texas Law, the interpretation of an unambiguous contract — as well as the determination of whether or not a contract is ambiguous — is a legal question. But once it is determined that a contract is ambiguous, the determination of the actual intent of the parties becomes a factual question. *Trinity Universal Insurance Co.* v. *Ponsford Brothers,* 423 S.W.2d 571 (Tex. 1968). *See Pletz* v. *Christian Herald Association,* 486 F.2d 94 (5th Cir. 1973); *Hennigan* v. *Chargers Football Co.,* 431 F.2d 308 (5th Cir. 1970); *Roy L. Jones, Inc.* v. *Home Transportation Co.,* 422 F.2d 179 (5th Cir. 1970). Hugh Hunt's interpretation of the intent of the January 16 agreement is arguable on the basis of vague and conflicting statements in the transcript. But we find that the transcript agreement is ambiguous with respect to these issues, and therefore we must defer to the trial court's resolution of the factual issue of intent unless his findings are "clearly erroneous." Fed.R. Civ.P. 52(a). The trial court considered Hugh Hunt's arguments on the scope of the releases contemplated by the January 16 agreement and concluded that the intent of the January 16 agreement is fairly embodied in the master settlement agreement.[9] 483 F.Supp. at 834-35. In

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may contractually bind the descendants and other successors of the actual signatory to the agreement. *E.g., Trevion* v. *Turcotte,* 564 S.W.2d 682 (Tex. 1978); *McConnell* v. *Corgey,* 262 S.W.2d 944 (Tex. 1953).

[9] These arguments are not all discussed in the opinion of the district court. That opinion does not explicitly deal with Hugh Hunt's contentions that (1) the January 16 agreement did not even call for a release of *present* claims that were unrelated to the relationship between Mrs. Lee and H.L. Hunt, and (2) the January 16 agreement did not contemplate his release of his children's rights. We note that Hugh Hunt's argument to the district court did not clearly delineate the different aspects of his disagreement with the release provisions of the master settlement agreement. Memorandum of Hugh L. Hunt in Opposition to Defendant's Motion to Enforce the Settlement Agreement, Record at 2825. In the context of the arguments made to the district court, and of that court's order and opinion, it is clear that the district court nevertheless rejected these contentions as a matter of fact.

this case the trial court's findings are due particular deference, for the court presided over the trial and was present at the formation and execution of the agreement it was called upon to interpret. On the basis of the transcript of the January 16 meeting, we cannot say that the district court's findings were clearly erroneous.

In addition to the scope of the releases, Hugh Hunt points to several other discrepancies between the January 16 agreement and the master settlement agreement. First, he notes that the requirement for the signatures of Hugh Hunt's descendants was dropped in the final document. But as we have already stated, the Hunt Estate had preserved a right to do this. Second, he argues that the actual distribution of the settlement funds is not set out in the January 16 agreement. This distribution was left open so that Mrs. Lee could thereafter decide precisely how the money should be distributed for the most favorable tax treatment. 483 F.Supp. at 836. Hugh Hunt made no objection to this arrangement and we do not believe that the deferral of this matter is relevant to his obligations. Third, Hugh Hunt maintains that the provision in the master settlement agreement stipulating that Texas law shall govern the interpretation of the agreement was not discussed or contemplated on January 16. It is true that the transcript of the January 16 meeting includes no reference to the parties' contractual choice of law; but since Texas law would govern in the absence of an agreement, the provision has no effect on any of the parties. Finally, Hugh Hunt argues that the master settlement agreement does not honor the Hunt Estate's purported agreement to obtain new trustees for certain trusts previously established for the benefit of Mrs. Lee's children and grandchildren. But the representation of counsel for the Hunt Estate in the January 16 meeting was only that:

> It is understood that Mrs. Lee and her children may want to arrange for the appointment of a different advisory committee or a different trustee. Ray Lee Hunt is agreeable to this being done provided it can be legally

> done. He will cooperate in the every way to provide for a change in either the advisory committee or the trustee.

Record at 1282. As the district court noted, such a change was not possible under applicable state law. 483 F.Supp. at 836. We conclude that the district court correctly found that the master settlement agreement is a reasonable embodiment of the intentions of the parties in the January 16 agreement, and that Hugh Hunt may properly be required to execute it.

VI. THE PURPORTED ILLEGALITY OF THE CONTRACT

Finally, Hugh Hunt argues that certain provisions of the master settlement agreement are *contra bones mores* under Louisiana law. In particular, he points to Louisiana cases which prohibit the renunciation of inheritance rights which depend on the death of some living person, and to a Louisiana constitutional provision which prohibits discrimination on the basis of illegitimacy in matters of property or inheritance. We doubt that these policies, even if applicable, would void the entire contract. So long as the consideration is legal and the provisions are separable, those contractual provisions which are not illegal may still be enforced. *Williams* v. *Williams,* 569 S.W.2d 867 (Tex.1978). But it is not necessary to reach this question or to determine the precise relevance of the asserted Louisiana policies to the master settlement agreement. As we determined *supra,* it is the law of Texas that governs this contract. And, although the district court made the same determination, Hugh Hunt has at no point contended that any provision of the agreement is contrary to Texas Law.

We conclude that the January 16 settlement agreement embodied in the transcript of the conference held that day in the judge's chambers is an enforceable contract of settlement under Texas law and is binding on Hugh Hunt. We also conclude that the master settlement agreement reasonable represents the intent of the January 16 agreement, and that Hugh Hunt may be bound by its terms. The judgment of the district court is affirmed in all respects.

AFFIRMED.

APPENDIX D

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION No. 76-0628

MRS. FRANIA TYE LEE, *Plaintiff,*

v.

RAY LEE HUNT, Executor of the Estate of H.L. Hunt, *Defendant.*

FINAL JUDGMENT

Filed December 27, 1979

This cause came on before the Court upon the Petition to Enforce Settlement Agreement (the "Petition") filed by Ray Lee Hunt, Executor of the Estate of H.L. Hunt (the "Estate"). The Petition requested, among other things, that the Court enforce against Hugh Lee Hunt, also known as Hugh S. Hunt ("Hugh"), the settlement agreement (the "Settlement") entered into on January 16, 1978, by the parties in the main action and certain other persons interested therein (including Hugh). Such request for enforcement asked, among other things, that the Court order Hugh to execute a "Master Settlement Agreement" and seventeen "Assignment of Expectancy Agreements" (collectively referred to herein as the "Settlement Documents") deposited with the Court pursuant to a "Deposit Agreement" (herein so called) on September 26, 1978, and order Hugh to dismiss a certain lawsuit as required of him by the Settlement. A plenary hearing on the Estate's Petition was held on December 7, 1978, at which the Court received evidence concerning the issues raised in the Petition.

Having briefs of counsel, and all of the evidence, the pleadings, the arguments and briefs of counsel, and all other matters properly before the Court, and in conformity with and pursuant to the Memorandum Ruling entered by the Court on December 19, 1979, the Court is of the opinion that the Estate is entitled to the relief which it seeks in its Petition.

Accordingly, it is DECLARED, ADJUDGED, and DECREED that the Settlement entered into on January 16, 1978 is a legally enforceable contract which is in all regards binding on each of the parties to it (consisting of Frania Tye Lee, the Estate of Howard F. Lee, Mark Steven Lee, Haroldina Hunt Lee Franch, Ronald Andrew Cartledge, Hugh Lee Hunt, Margaret Hunt Hill, Haroldson L. Hunt, Jr., Caroline Hunt Schoellkopf, Nelson Bunker Hunt, William Herbert Hunt, Lamar Hunt, Mrs. H.L. (Ruth Ray) Hunt, Ray Lee Hunt, Ruth June Hunt, Helen Hunt Kreiling, Swanee Hunt Meeks, and the Estate) and that by entering into the Settlement, each of the parties to it (including Hugh) were and, as hereby declared, are legally bound by and required to abide by the terms and conditions specified in the Settlement Documents, which documents are captioned and referenced as follows (the terms of all of which documents are incorporated into this Judgment by reference):

Caption	Reference
Master Settlement Agreement	Attached as Exhibit A to the Deposit Agreement, an original copy of which was received as part of Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing before the Court.

A series of seventeen Assignment of Expectancy Agreements (numbered 1 through 17 in the top righthand corner)	Original copies of which were deposited with the Court pursuant to the Deposit Agreement on September 26, 1978, and copies of which were received as part of Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing before the Court.

As provided in the Deposit Agreement, the Clerk of this Court shall retain one original copy of each of the Settlement Documents as part of the permanent record of this proceeding, which copies shall be marked by the Clerk for identification with this Judgment.

It is ORDERED that Hugh fully execute the Settlement Documents previously tendered to the Clerk of this Court by the other parties to the Settlement on or before 5:00 P.M., Thursday, December 27, 1979, failing which the Clerk of this Court shall on Friday, December 28, 1979 execute the Settlement Documents by signing Hugh's name in the appropriate spaces, which execution by the Clerk shall, pursuant to Rule 70 of the Federal Rules of Civil Procedure, have like effect as if performed by Hugh.

It is further ORDERED that Hugh shall, within thirty days from the date of entry of this Judgment, cause that certain action styled "Hue R. Lee, et al v. State of Louisiana, et al," being Cause Number 181,791 — Division "I," pending in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana (the "State Court Action") to be dismissed by filing in the State Court Action a motion to dismiss the State Court Action with prejudice, failing which the Clerk of this Court shall, immediately upon the expiration of such thirty-day period, execute such motion to dismiss by signing Hugh's name to it and file such motion in the State Court Action, which execution and filing by the Clerk shall, pursuant

to Rule 70 of the Federal Rules of Civil Procedure, have like effect as if performed by Hugh.

It is further ORDERED that the Clerk of this Court, after (1) execution by Hugh, or for him by the Clerk, of the Settlement Documents, as ordered herein, and (2) the filing of the executed motion to dismiss in the State Court Action by Hugh, or for him by the Clerk, as ordered herein, distribute the Settlement Documents previously deposited with him at the time specified in and in accordance with the "Deposit Agreement" attached to the Petition.

It is further ADJUDGED that the dismissal with prejudice of the action of Frania Tye Lee against Ray Lee Hunt heretofore ordered by Judgment of this Court dated January 23, 1978 be and is hereby reconfirmed in all respects.

It is further ORDERED that the entire record in this proceeding be placed under seal and preserved under lock, not to be opened except by order of this or a superior court. The docket sheet, the official minutes and the text of this Judgment (excluding the Master Settlement Agreement and Assignment of Expectancy Agreements referenced herein, which shall be placed under seal and lock as provided in the first sentence of this paragraph) shall be exempt from the order to seal the record.

DATED at Shreveport, Louisiana this 27th day of December, 1979.

/s/ TOM STAGG
Tom Stagg
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT,
W. D. LOUISIANA,
SHREVEPORT DIVISION.

Civ. A. No. 76-0628

FRANIA TYE LEE

v.

RAY LEE HUNT, Executor of the
Estate of H. L. Hunt.

On Motion to Enforce Settlement
Agreement Dec. 19, 1979.

STAGG, *District Judge.*

MEMORANDUM RULING

This action comes again before the court, this time on the motion of defendant to enforce the settlement agreement against Hugh S. Hunt (Hugh).[1] Although not formerly a party to this litigation, Hugh, the plaintiff's only living son, has from its inception been deeply involved in the lawsuit, if not the moving force behind it. He has now been joined as a party to the motion and is the only person involved in the settlement negotiations who has not executed the final settlement agreement.

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[1] Also referred to in the record as "Hue R. Lee," "Hue R. Hunt," and "Hugh Lee Hunt."

I.

The allegations of plaintiff's Complaint, more fully discussed elsewhere,[2] can be summarized as follows. Mrs. Lee met "Franklin" Hunt in Tampa, Florida and they were married in that city on November 11, 1925. Shortly thereafter, they moved to Shreveport, Louisiana where two children were born to the marriage. In 1930, the family moved to Dallas, Texas, where a third child was born. In May of 1934, Mrs. Lee learned that "Franklin" Hunt was actually H. L. Hunt and that he had been married to Lyda Bunker Hunt for some years prior to 1925. A short time later Mrs. Lee moved to New York where a fourth child was born.

On January 24, 1942, after Mrs. Lee had threatened suit, Hunt paid her a substantial sum in settlement of her claims against him, though without admitting the validity of her claims. It is further alleged that Mr. Hunt promised to acknowledge in his will their purported marriage and the legitimacy of their children, and to bequeath to her and their children properties in settlement of her interest in the community. When Hunt's death revealed that he had not kept his promise, Mrs. Lee filed this action seeking to be recognized as his putative wife and declared owner of one-half of the community property acquired during the relationship. Defendant staunchly denies most of these allegations.

Following protracted pretrial proceedings, the case was tried to a jury beginning on January 9, 1978. On the morning of the sixth day of trial, after plaintiff had rested her case, the parties announced that a compromise had been achieved and an agreement was entered into by the parties and the other members of the Hunt families ("January 16 agreement"). The agreement was dictated by the parties in

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[2] *See Lee* v. *Hunt*, 431 F.Supp. 371 (W.D.La. 1977); *Lee* v. *Hunt*, 415 F.Supp. 245 (M.D.La. 1976). *See also* this Court's Memorandum Rulings of December 14, 1977, January 10, 1978, January 11, 1978, January 12, 1978, and January 13, 1978.

Chambers and signed in the presence of the Court by all concerned (or by their agents) including Hugh. Hugh was given a copy; he read it in presence of the Court and acknowledged to the court that he understood its terms. It was clearly understood that a more formal document would be executed as soon as it could be prepared. The jury was discharged and a judgment of dismissal was entered accordingly.

Hugh now claims that he did not understand the January 16 agreement to be binding and that, in any event, the more formal document executed by all of the other parties to the earlier agreement does not accurately reflect the dictated agreement. The Court disagrees with Hugh Hunt on both counts and, for reasons set out below he is obligated to execute the Master Settlement Agreement.

Before considering the merits of these contentions, however, there are several procedural objections raised by Hugh that must be addressed.

II.

Following his joinder to this action, Hugh moved to vacate the judgment of dismissal entered following the settlement, thus reopening the entire action, and, alternatively, to dismiss the proceedings against him on the basis of several provisions of Fed.R.Civ.P. 12(b). Hugh has withdrawn the motion to vacate the judgment under Rule 60(b).[1] Hugh's motion under Rule 12(b) presents questions of subject matter jurisdiction, venue, personal jurisdiction, service of process, and the sufficiency of the pleadings against him. The questions will be considered in that order.

The memorandum accompanying Hugh's motion to dismiss offers little enlightenment concerning the basis for his claim that this court lacks jurisdiction over the subject matter of the motion to enforce the settlement agreement. He appears to rely on the fact that he was not a party to the litigation that was settled. While this may be offered as a defense

[1] *See* the Transcript of the December 7, 1978 Hearing, at 9-11.

on the merits to the action to enforce the settlement, it has nothing to do with the subject matter jurisdiction of this Court. It is clear beyond cavil that a court may entertain an action to enforce a settlement of litigation pending before it.[4] *Pearson* v. *Ecological Science Corp.*, 522 F.2d 171 (5th Cir. 1975), *cert. denied sub nom. Skydell v. Ecological Science Corp.*, 425 U.S. 912, 96 S.Ct. 1508, 47 L.Ed.2d 762 (1976); *Massachusetts Casualty Insurance Co.* v. *Forman*, 469 F.2d 259 (5th Cir. 1972); *Cia Anon Venezolana de Navegacion* v. *Harris*, 374 F.2d 33 (5th Cir. 1967).

Hugh objects to venue on the ground that venue was held proper in the main action only because defendant waived its objection, an act which cannot be imputed to Hugh. *See Lee* v. *Hunt*, 431 F.Supp. 371, 39 (W.D.La.1977). This argument fails on two counts. First, judicial economy and the policy favoring settlement as an *end* to litigation require that settlement agreements be enforced in the same court in which the litigation was pending. *Aro Corporation* v. *Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir.), *cert. denied*, 429 U.S. 862, 97 S.Ct. 165, 50 L.Ed.2d 140 (1976); *D. H. Overmyer Co.* v. *Loflin*, 440 F.2d 1213 (5th Cir.), *cert. denied*, 404 U.S. 851, 92 S.Ct. 87, 30 L.Ed.2d 90 (1971). Second, an action to enforce a settlement agreement is analogous to an action for breach of contract. *Kaspar Wire Work, Inc.* v. *Leco Engineering and Machine, Inc.*, 575 F.2d 530, 538 (5th Cir. 1978); *Florida Education Association, Inc.* v. *Atkinson*, 481

[4] Even assuming the soundness of the recent decision in *Fairfax Countywide Citizens* v. *Fairfax County*, 571 F.2d 1299 (4th Cir.), *cert. denied*, 439 U.S. 1047, 99 S.Ct. 722, 58 L.Ed.2d 706 (1978) (independent basis for jurisdiction required in action to enforce settlement — as opposed to reopening the action under Rule 60(b) — unless settlement agreement is contained, or to be contained, in judgment), *but see Aro Corp.* v. *Allied Witan Co.*, 531 F.2d 1368 (6th Cir.), *cert. denied*, 429 U.S. 862, 97 S.Ct. 165, 50 L.Ed.2d 140 (1976) (lack of diversity does not deprive court of power to enforce settlement agreement not contained in judgment), this Court has jurisdiction because Hugh is a citizen of Maryland, plaintiff is a citizen of Georgia, and defendant is a citizen of Texas.

F.2d 662, 663 (5th Cir. 1973). The subject and merit of the original litigation are no longer material, the cause of action for enforcement arises out of Hugh's signing and repudiation of the agreement in this district. Thus, not only is venue proper in this district, this may be the only court in which the matter might have been brought.[5]

The memorandum in support of the motion to dismiss is also silent regarding the related questions of personal jurisdiction and insufficiency of service of process. The motion itself simply states that Hugh has not transacted any business or had other contacts with this state sufficient to support invocation of the long-arm statute. This is clearly not so. The negotiation and execution of a settlement agreement constitutes transaction of business and, when that agreement is the subject of a lawsuit, justifies resort to the long-arm statute. *Meetings & Expositions, Inc.* v. *Tandy Corporation,* 490 F.2d 714, 717 (2d Cir. 1974). Further, joinder of nonparties involved in the settlement process is a permissible alternative to an independent action. *Wood* v. *Virginia Hauling Co.,* 528 F.2d 423 (4th Cir. 1975); *Meetings & Expositions, Inc.* v. *Tandy Corporation, supra.*

Accordingly, the motion to dismiss must be denied. The challenge to the sufficiency of the pleadings under Rule 12(b)(6) will be referred to the merits, to which we must now turn.

III.

The settlement in this case is a creature of the unusual family setting in which it was born. The agreement appears at

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[5] The Court cannot agree with defendant that filing a motion to vacate the judgment simultaneously with an objection to venue constitutes a waiver of the latter. The spirit of the Federal Rules is to encourage unitary rather than fragmentary proceedings, even if this means placing inconsistent claims and defenses at once before the court. 15 Wright, Miller & Cooper, Federal Practice and Procedure §3829 at 198.

once generous and exacting, reflecting, perhaps, the powerful incentives for compromise on both sides of the table. Contrary to the normal inference offered by a settlement at this stage of the proceedings, Mrs. Lee was not negotiating from a legal position of strength. A series of evidentiary rulings issued during the trial had greatly restricted the scope of her claim and proof.

On the second day of trial, the Court ruled that Mrs. Lee could not introduce parol evidence to prove that the 1942 settlement with H.L. Hunt was not intended to encompass her claim of community property.[6] The following day the Court ruled that the civil effects of the alleged putative marriage ended in 1934 when Mrs. Lee admittedly discovered the preexisting impediment to her marriage, namely, H.L. Hunt's marriage to Lyda Bunker Hunt. Thus, the 1942 settlement was not voided by the contractual incapacity between husband and wife. By the same token, her claim of community property was restricted to the period from 1925 to 1934.[7] Finally, on the fourth day of trial, the Court ruled that the jury would not be allowed to consider the claim that H.L. Hunt promised to acknowledge their marriage in his will and to treat her children equally with the children of his first marriage, because she was unable to produce the corroborating witness required by the Louisiana Dead Man's Statute.[8]

Mrs. Lee's remaining response to the Estate's defense of compromise and transaction was to attempt to void the 1942 agreement on grounds of fraudulent inducement—that H.L.

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[6] *See* the "Rulings on Evidence" filed on January 10, 1978. (Copy attached.)

[7] *See* the Memorandum Ruling filed on January 11, 1978. (Copy attached.)

[8] *See* the Memorandum Ruling filed on January 13, 1978 (together with the first part of the Ruling of January 10). The Ruling was issued before the testimony of Wright Matthews, and alludes to the possibility that he might become the necessary corroborating witness. He did not. (Copy attached.)

Hunt misrepresented, or failed to disclose, the value of the community property.[9] Beyond the difficulty of proof, this tactic faced a serious objection of prescription due to the passage of nearly thirty-four years between execution of the agreement and the filing of this suit. While none of the rulings impaired Mrs. Lee's chances of establishing the putative marriage,[10] she was aware of the substantial and potentially damaging evidence to be presented by the defendant on that issue.

Mrs. Lee thus approached the Monday morning settlement weighing the sacrifice of her opportunity for official recognition of her marriage against the benefit to herself and her family from a multi-million dollar settlement. There was also the consideration that a substantial settlement would tend to confirm her claim in the public mind, thereby achieving some degree of recognition for her marriage. The Estate, on the other hand, was weighing these costs against its interest in withdrawing the dispute from the public arena, avoiding the chance of a partial verdict against it, and obtaining and end to all *future* related litigation.[11] Hugh's stance in the negotiations was one of embattled concession; he neither accomplished his goal of legitimation nor shared directly in the spoils,

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[9] *See* the Memorandum Ruling filed on January 10, 1978, at 4-5.

[10] "If the settlement was valid, it released any claim to property of H. L. Hunt by virtue of the relationship between him and Frania Tye. It does not defeat her right to be declared the putative wife of H. L. Hunt if she can establish the elements of that claim, but it bars her recovery of any property by virtue of a declaration that she was his putative wife." Memorandum Ruling of January 10, 1978, at 4.

[11] "In the main demand, Mrs. Lee alleged she was the putative spouse of H. L. Hunt. Had she been successful in such assertion, the offspring of the relationship might be entitled to claim various sorts of inheritance rights as legitimate heirs or half-brothers or sisters of members of [the other families]." Defendant's Post Hearing Brief in Support of Petition to Enforce Settlement Agreement, filed on February 7, 1979, at 21.

nor was he even free to fight again another day. As his counsel, perhaps unwittingly,[12] stated in the briefs: "as an accommodation to the plaintiff, his mother, Mr. Hunt voluntarily agreed to execute a settlement which would terminate this litigation in order to enable his mother to derive whatever benefits she could from this proposed settlement.[13]"

Ordinarily, this Court would summarily enforce a settlement agreement such as that dictated in Chambers on January 16. In this case, however, Hugh has raised factual questions concerning the existence of an agreement and what that agreement covers. In accordance with the teaching of *Pearson* v. *Ecological Science Corp.*, 522 F.2d 171, 176 n. 5 (5th Cir. 1975), and *Massachusetts Casualty Insurance Co.* v. *Forman*, 469 F.2d 259 (5th Cir. 1972), a plenary hearing was held on December 7, 1978 and all parties were given the opportunity to present such evidence as they deemed material. The following analysis of Hugh's objections is based on that hearing, the record, and the Court's own longstanding involvement with this lawsuit.

IV.

When presented with a settlement and asked to enforce it, a court must first determine if a binding agreement was actually reached and, if so, what the contract provides. *Wood* v. *Virginia Hauling Co.*, 528 F.2d 423, 425 (4th Cir. 1975). Settlement agreements being contracts, their enforceability is governed by the whole law of the forum state. *Florida Education Association, Inc.* v. *Atkinson*, 481 F.2d 662, 663 (5th Cir. 1973). However, the parties are free to choose any law to govern the contract's interpretation, which must be distinguished from its validity or enforceability.

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[12] *See* the "Reply Memorandum of Hugh L. Hunt in Reply to Post Hearing Brief in Support of Petition to Enforce Settlement Agreement", filed on February 13, 1979, at 1.

[13] Memorandum in Support of Motion to Vacate or Modify Judgment and Motion to Dismiss, filed on November 22, 1978, at 2-3.

Several of the objections raised by Hugh at the hearing are directed to the validity of the January 16 agreement. First, Hugh asserts that he did not participate in any settlement negotiations prior to the January 16 conference and that he was not represented by counsel at that conference. Neither circumstance is of any consequence nor is either assertion entirely correct. Hugh's letter to this Court details his involvement in the settlement negotiations during the trial.[14] He had also been involved in retaining counsel for Mrs. Lee and had consulted with them throughout the trial.[15]

The transcript of the January 16 conference shows that Hugh was painfully aware of the effect of the agreement, he simply didn't want to permit it. Nonetheless, he stated "I will sign whatever papers you want"—and did. The pressure to which he was subjected is not the sort of duress that will relieve one of his knowing obligations. La.Civ.Code arts. 1819, 1851. *See United States* v. *Lamont,* 155 U.S. 303, 310, 15 S.Ct. 97, 39 L.Ed. 160 (1894). If Hugh is to void the January 16 agreement, he must establish some intrinsic defect. To this end, he asserts that it fails to state the dollar amount of the settlement and that it was not intended to become binding until signed by his wife and major children. The first objection is overcome by La.Civ.Code art. 1894: "An agreement is not the less valid, though the cause be not expressed." The second objection is not so easily met.

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[14] *See* Hugh Hunt Exhibit 1, at 2-3, filed in the record of the December 7, 1978 Hearing (*e.g.*, "our intention at all times in this suit was to go for the putative wife issue without compromise with the cash part being negotiable.")

[15] *Id.* at 4. ("I even asked our attorneys to hint to the other Hunt families to allow the putative if they did not have to pay any money, but our attorneys did not want to consider even mentioning that idea to them."). Hugh signed the contract retaining plaintiff's counsel and agreed to retain them if the evidence revealed any cause of action on his behalf.

At the outset of the settlement conference, the Court stated that the transcript would have a place for the participants "to sign their names indicating their full agreement with the terms."[16] This sobering theme was repeated throughout the agreement, as when the Court reminded Hugh, just before he left the room, "that this was a final settlement."[17] There is no reasonable basis for believing that the January 16 agreement was not intended to bind the signatories. It is true that the agreement contemplated that the spouses and major children of Mrs. Lee's children, or their representatives, would be required to sign the more formal document.[18] However, it is equally true that this requirement was inserted solely for the benefit of the Estate and other Hunt families, and could thus be waived by them.[19] *Probst* v. *DiGiovanni*, 232 La. 811, 95 So.2d 321, 324 (1957); *Cuna* v. *Elton Lumber Co., Ltd.* 148 La. 1097, 88 So. 493 (1921); *Lotz* v. *Hessler*, 369 So.2d 265 (La.App. 4th Cir.), *writ denied*, 371 So.2d 1343 (La.1979). The more formal document does not require the signatures of his spouse and children because the Estate determined to its satisfaction that these persons have rights derivative only from Hugh, and his signature alone suffices.[20]

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[16] Trial transcript at 1256.

[17] *Id.* at 1267.

[18] "It is understood that this release will be signed by Mrs. Lee and by her children and grandchildren. . . . Or their representatives." Trial transcript at 1273 (counsel for the Estate).

[19] "In our discussion, I indicated that it was represented to me that the major children of these people need not sign, had no legal rights. If we discover they do have legal rights, we are going to require them to sign."

"[I]f we determine that they (spouses) have legal . . . rights, we are not going to be signing that release if they don't." Trial transcript at 1265 and 1274. (Counsel for children of Lyda Bunker Hunt).

[20] Post Hearing Brief in Support of Petition to Enforce Settlement Agreement, filed on February 7, 1979, at 20.

Hugh contends that the requirement that his own family sign the more formal document was the cause of his agreement to be bound. But this is not a case of reciprocal agreements; Hugh would derive no benefit from the agreement of his family, nor would they benefit from his agreement. Rather, it was from their refusal to sign that he hoped to benefit, to be released from his agreement. This argument can only be understood from the point of view of a promisor in bad faith. No good faith party to a contract can have as his motive the defeat of the agreement. However, the record is replete with instances of such an attitude on the part of Hugh. Shortly after the settlement conference, Hugh condemned the agreement, stating "if I could get out of it I would get out of it."[21] This Court will not assist Hugh in that effort. *See* La.Civ.Code art. 1901. The January 16 agreement was voluntarily executed with knowledge of its binding effect, and any mistake of law or fact on Hugh's part cannot void it. La.Civ.Code arts. 1825, 1846(2). The question thus becomes whether the document that Hugh has refused to sign is an accurate reflection of the January 16 agreement.

V.

The January 16 agreement clearly contemplated that a more formal document would be drafted embodying the releases described in the agreement. Preparation of this document, the "Master Settlement Agreement", was commenced immediately after the conference by all counsel involved in that agreement. Contrary to the statement of Hugh's counsel in the briefs, it did not take eight months of hard negotiating to confect that document. By the time of the February 25 conference, the document was largely complete. At that point, however, Hugh stated that he needed time to consult his counsel. While the parties awaited his response, Mrs. Lee discharged her counsel and was delayed in enrolling new counsel. Finally, Hugh refused to sign and the Deposit Agree-

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[21] Transcript of December 7, 1978 Hearing, at 94.

ment and other papers relating to this motion had to be prepared.

It should be noted that all of the eighteen necessary signatories other than Hugh, many of whom have interests similar to his, have signed the agreement, reflecting their belief that it accurately represents their earlier agreement. The Estate contends that the result should be the same even if the Master Settlement Agreement were materially different, because Hugh cannot be heard to complain of the non-performance of a condition of the earlier agreement, (*i.e.*, that a representative more formal document be drafted) when he caused that non-performance by refusing to negotiate in good faith. The Court need not rely on that defense because it finds that all of the provisions of the Master Settlement Agreement are within the contemplation of the January 16 agreement.[22]

Hugh maintains that the Master Settlement Agreement departs from the January 16 agreement in its treatment of five subjects: confidentiality, the Reliance Trusts, distribution of the settlement proceeds, the scope of the releases, and the choice of law to govern interpretation of the agreement. The arguments will be considered in that order.

The January 16 agreement permanently prohibits public communication by any party to the agreement concerning the lawsuit or the relationship between Mrs. Lee and H.L. Hunt and between their respective families. It also provides that the more formal document shall contain "appropriate indemnity provisions." Hugh complains that the Master Settlement Agreement is too restrictive and objects to its provision for liquidated damages. While certainly more specific, the master agreement is no more restrictive than the broad language of

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[22] "The obligation of contracts extends not only to what is expressly stipulated, but also to everything that by law, equity or custom, is considered as incidental to the particular contract, or necessary to carry it into effect." La.Civ.Code art. 1903.

the initial agreement. Further, the provision that any profits of the breach of confidentiality shall constitute liquidated damages is the minimal indemnity provision that could reasonably be deemed appropriate. The fact that this and other provisions of the master agreement apply to non-signatory members of Mrs. Lee's family is of no consequence because the agreement holds only Mrs. Lee liable for their conduct.[23]

Hugh also objects to the master agreement's provision that the record be sealed by order of Court, on the grounds that it binds persons not parties to the lawsuit. His interpretation of the master agreement is accurate but it represents merely the consent of the parties to the Order previously entered by the Court on January 23, 1978. The restrictions imposed upon Mrs. Lee's disposition of certain items of jewelry and personal letters that had been introduced as evidence at the trial are necessary incidents of their release from the custody of the Clerk, an act to which Hugh does not object.

The next subject of dispute is the master agreement's failure to address the desire of Mrs. Lee and Hugh to obtain a new trustee or advisory board for the Reliance Trusts. These trusts were formed by Mrs. Lee in 1941 for the benefit of her four children. In the January 16 agreement the Estate agreed to see what it could do about installing officers more to the liking of Hugh and Mrs. Lee. Upon reviewing the act establishing the trusts, the Estate concluded, and the Court agrees, that no one can effect the removal of the officers except the officers themselves, without terminating the trust.[24] Accordingly, reference to the substitution of trust officers was appropriately omitted from the master agreement.

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[23] *See* Master Settlement Agreement at 12, Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing.

[24] *See* the Act of Donation of April 12, 1941, filed in the record on December 28, 1978.

At the close of the settlement conference the question of distribution of settlement funds was raised. The concern was that improved tax treatment could be obtained if any money destined for other members of Mrs. Lee's family went directly to them rather than passing through Mrs. Lee first. Mrs. Lee stated that at least half of the money would go to trust funds being established for her grandchildren. The Master Settlement Agreement provides that the entire amount shall be paid jointly to Mrs. Lee, her lawyers, her two living children, and the major children of her two deceased children.[25] The change is not a material one since Mrs. Lee and the other recipients of the funds have approved the manner of payment. Hugh has no proper interest in the matter.

The most significant subject of dispute is the scope of the releases. Hugh objects to the release of future claims against members of the other families which are not related to the subject matter of the lawsuit. And well he might object but for the fact that no such release is required by the master agreement. That agreement, like the January 16 agreement, requires a release of all claims, present and future, arising out of the subject matter of the lawsuit—the relationship between Mrs. Lee and H.L. Hunt. However, only *existing* claims between members of the different families are released if they are not related to the lawsuit.

The January 16 agreement provides that members of each family shall release all inheritance rights in the estates of members of the other families. Hugh claims that the January 16 agreement was intended to release only rights of intestate succession while the master agreement would cover testamentary rights, as well. All parties knew that the settlement agreement was to end all rights arising from the relationship between Mrs. Lee and H.L. Hunt. Obviously, this would include rights as heirs at law in the intestate succession of any member of the other families. Less obviously, it would in-

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[25] *See* Joint Exhibit 8 filed in the record of the December 7, 1978 Hearing.

clude any right under a testamentary bequest referring to "brothers and sisters." It may be difficult to understand why so much energy would be expended regarding release of a right which could be changed at any time by the testator. Part of the debate is, no doubt, attributable to the difficulty of reviewing and amending the myriad wills and trust documents. However, all parties were also aware that the claim could be made that a certain member of one of the families no longer possessed testamentary capacity. Thus it was clearly understood that existing testamentary rights would also have to be released, allowing them to be specifically reestablished after the date of the settlement if the testator wished to include members of the other families. The Master Settlement Agreement is reasonably designed to fulfill that intent.

Hugh also objects to one of the final provisions of the master agreement: "The conditions, terms, provisions and covenants contained in this agreement shall apply, inure to the benefit of, and be binding upon the parties hereto, and their respective heirs, successors, assigns, and legal representatives."[26] This provision adds nothing to what the law governing contracts already provides. *See, e.g.,* La.Civ. Code arts. 1997, 1999.

The final subject of dispute consists of Hugh's related objections to the choice of Texas law to govern the agreement, and to the waiver of future inheritance rights. Hugh properly asserts that Louisiana law looks with disfavor upon attempts to waive future inheritance rights. However, as none of the parties reside in Louisiana, that substantive policy is of no consequence. Article 10 of the Civil Code requires application of the law of the place where the contract is to have effect, which, in the case of the persons being released by Hugh, is Texas. Hugh does not claim that the waiver is void under the law of Texas.

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[26] Master Settlement Agreement, at 15, Joint Exhibit 9 filed in the record of the December 7, 1978 Hearing.

For the same reason, it is clear that the parties intended Texas law to govern the agreement. Under accepted canons of construction, the parties must be deemed to have intended to create an enforceable contract. A court should not lightly read an agreement in such a way as to frustrate this intent. To require application of Louisiana law would defeat the aim of the parties, most of whom reside in Texas. Accordingly, the Court finds that the Master Settlement Agreement properly reflects the intent of the parties to the January 16 agreement.

CONCLUSION

Having found that Hugh S. Hunt is properly before this Court, that he executed a binding contract on January 16, 1978, and that this contract obligates him to execute the Master Settlement Agreement and accompanying documents, the Court does hereby order him to do so. Although at the December 7, 1978 hearing he agreed to waive the opportunity to comply with this Order, the Court will extend him a brief opportunity once more.

If Hugh has not executed the documents by 5:00 O'Clock P.M. on Thursday, December 27, 1979, the Court will direct the Clerk to execute them in his place by a judgment to be submitted by counsel for the Estate on Friday, December 28, 1979.

APPENDIX F

SUPREME COURT OF THE UNITED STATES
October Term, 1980

No. 80-2126

HUGH S. HUNT, *Petitioner,*

v.

RAY LEE HUNT, EXECUTOR OF THE ESTATE OF H. L. HUNT, *Respondents,*

Certificate of Service

THIS IS TO CERTIFY THAT I HAVE SERVED THE OTHER PARTIES SHOWN IN THE ATTACHED CASE WITH COPIES OF PETITIONER'S PETITION FOR WRIT OF CERTIORARI BY DEPOSITING COPIES OF SAME IN THE UNITED STATES MAIL, WITH SUFFICIENT POSTAGE THEREON, TO THEIR ATTORNEYS AT THE FOLLOWING ADDRESSES:

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%J. Ed Segraves
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EXECUTOR OF THE ESTATE OF H. L. HUNT
DEFENDANT-APPELLEE
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THIS THE 16 DAY OF JUNE, 1980.

/s/ HUGH S. HUNT
Hugh S. Hunt
PRO SE

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